AN

ELEMENTARY ANALYSIS

OF THE

LAWS AND REGULATIONS

ENACTED BY THE

GOVERNOR GENERAL IN COUNCIL,

AT FORT WILLIAM IN BENGAL,

FOR THE

CIVIL GOVERNMENT OF THE BRITISH TERRITORIES UNDER THAT PRESIDENCY.

IN SIX PARTS,

VOL. I.

COMPRISING THE FIRST AND SECOND PARTS, AND A SUPPLEMENT TO THE FIRST PART;

OR

GENERAL LEGISLATIVE PROVISIONS; AND RULES FOR CIVIL AND CRIMINAL JUSTICE, AND THE POLICE.

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SECTION IV.

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NOTE.

THE first part of this Analysis having (as stated in the Note to page 212) included only the Regulations concerning civil justice passed to the end of July 1805; and several rules of importance having been since enacted, whereby those before in force are materially altered; especially with respect to civil process under Regulation II, 1806, and the jurisdiction of the zillah and city courts under Regulation XIII, 1808; it appears advisable to add a Supplement, containing the substance of the Regulations for the administration of civil justice, which have been published to the end of 1808; to which period the regulations for criminal justice have also been stated. Those who are inclined to make one Volume of the First and Second Parts of this Analysis (as suggested in the Note to Page 579,) are therefore requested to wait until they receive the Supplement to the First Part, which will be prepared and printed without delay.

J. H. HARINGTON.

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THE MOST NOBLE MARQUESS WELLESLEY, K. P.

&c. &c. &c.

MY LORD,

THE following Elementary Analyſis, of the laws and regulations enacted by the Governor General in Council at this Preſidency, having been undertaken at your Lordſhip's expreſs deſire; and being deſigned for the uſe of the Students in the College of Fort William, which was founded by your Lordſhip, for the inſtruction of the junior Civil Servants of the Honorable Company, in the knowledge required for the diſcharge of their various and important duties, in the internal government of the Britiſh Empire in India; a dedication of the work to your Lordſhip is equally dictated by a ſenſe of obligation and propriety; and by a voluntary impulſe to offer an humble, but ſincere, token of perſonal reſpect for your Lordſhip's eminent character, talents, and virtues.

I HAVE already joined my fellow ſervants of the Company, with the other Britiſh inhabitants of Calcutta, in an unanimous public acknowledgement of your Lordſhip's diſtinguiſhed ſervices, in advancement of the national intereſts and glory, during a memorable adminiſtration of ſeven eventful years. And it is not my preſent purpoſe to indulge a private feeling, by expreſſing the gratitude of an individual, for your Lordſhip's unmerited ſelection of him, to fill a high judicial ſituation; or for the diſtinction conferred upon him, by an honorary profeſſorſhip in the firſt Collegiate Inſtitution at this ſettlement; the foundation of which, (whether it be permanently fixed upon its preſent ſolid baſis in India; or whether it be ſubſtantially removed to the mother country, with a view to

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the more economical attainment of the ſame unqueſtionable ends of good policy;) muſt remain a perpetual memorial of your Lordſhip's enlightened regard to the eſſential conſequence of providing for the juſt, conciliating, and beneficial, government of the Aſiatick poſſeſſions of Great Britain; by inſtructing the public officers to be employed, in the languages, laws, and cuſtoms of it's inhabitants; and by promoting, to the utmoſt, their competent qualification for the due execution of the arduous duties, and extenſive truſts, committed to them.

But it will not, I hope, be deemed preſumptuous, or unconnected with the ſubject of the accompanying Analyſis, if I refer to it, as demonſtrative of the wiſe, equitable, and benevolent principles, which have regulated your Lordſhip's intelligent and faithful application of the ſacred depoſit of legiſlative power, to confirm, ſtrengthen, and diffuſe, it's genuine and primary object; an efficient and impartial adminiſtration of juſtice. It was your Lordſhip's good fortune to find, upon your acceſſion to the government of Bengal, an eſtabliſhed ſyſtem of law and regulation, which had been introduced by Marquess Cornwallis; and maintained, with an extenſion of it to the province of Benares, by Lord Teignmouth. But it was your Lordſhip's comprehenſive diſcernment, which at once ſaw the full ſcope and tendency of that ſyſtem. It was your Lordſhip's zealous deſire, to render the Britiſh ſovereignty of theſe provinces conducive to their proſperity, and to the ſecurity and happineſs of their numerous inhabitants, which prompted various inquiries to aſcertain the experienced ſufficiency of the exiſting laws for the accompliſhment of the politic and benignant purpoſes deſigned by them; and it was your Lordſhip's tranſcendent merit, inſtead of innovating upon the ſyſtem which had been eſtabliſhed by a former Government, to direct your vigilant attention, with that of the public officers acting under your ſuperintendence, to preſerve, improve, and enlarge, the operation of the laws and regulations in force; to provide, by every practicable means,

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for their more effectual and upright adminiſtration; and to ſupply, as circumſtances required, or experience ſuggeſted, thoſe additions and amendments, of which no wiſdom could foreſee the neceſſity, or expediency, in the firſt inſtance.

That this is no compliment, offered upon inſufficient grounds, will amply appear from the plain authentic ſtatement, contained in the annexed ſheets, of the laws and rules enacted, and of the courts of judicature eſtabliſhed, for the diſtribution of civil juſtice, in the provinces of Bengal, Bahar, Oriſſa, (with Cuttac) and Benares; the territory ceded by the Nawab Vizeer and the Peſhwa, and the conquered territory on each ſide of the Jumna; founded, throughout, upon the printed code of regulations which has been promulgated under the authoritative ſanction of the Governor General in Council at this preſidency. As this initial part of my analyſis (including the notes added whilſt the text was in the preſs) has been brought forward to the cloſe of your Lordſhip's government; it is my intention, whenever the intermiſſion of official duties may admit of my completing the ſucceeding parts, to compriſe in them the whole of the regulations ſubſiſting at the ſame period; and to reſerve, for a concluding ſection, or for a future compilation, any additional legiſlative proviſions which may be hereafter enacted.

The work undertaken at your Lordſhip's recommendation, and printed, by direction, for the college under your Lordſhip's patronage, will thus exhibit, as far as my limited talents and qualifications enable me to repreſent it, a general view of the laws and regulations in force, at the commencement and in the courſe of your Lordſhip's government, for the internal adminiſtration of this valuable portion of the Britiſh Empire; comprehending a territory of more than two hundred thouſand ſquare miles; and a population, at the loweſt eſtimate, more than twofold that of the United Kingdom in Europe. As ſuch, I flatter myſelf that, however defective in

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the execution, it will not be altogether unacceptable to your Lordſhip; and with this impreſſion, I have ventured to publiſh the firſt part of it, on the eve of your Lordſhip's departure from India, under the auſpices of your illuſtrious name. Any deficiencies conſequent to a firſt attempt will, I know, obtain your Lordſhip's liberal indulgence; and I have the fulleſt confidence that, if found to poſſeſs any degree of merit or utility, it will receive from your Lordſhip the approbation and protection, which have uniformly encouraged every well meant endeavour, for the benefit of the public ſervice; and which I ſhall eſteem the moſt honorable reward of my labours.

I am, My Lord,

With the higheſt reſpect,

Your Lordſhip's faithful

And obliged Servant,

J. H. HARINGTON.

Calcutta, July 31, 1805.

INTRODUCTION.

THE Author of the following attempt to facilitate the ſtudy and knowledge of the Laws and Regulations, enacted by the Governor General in Council of the Britiſh poſſeſſions in India, is conſcious that he has little qualification for ſuch an undertaking, except what he may have derived from official experience, in the courſe of nearly four and twenty years employment; formerly in the Revenue, and latterly in the Judicial Department, of the Honorable Company's Civil Service at this Preſidency. In diſcharge of the obligations impoſed by the Public Truſts committed to him in theſe Departments, it became his duty to inform himſelf of the letter, and, as far as lay in his power, of the principles, ſpirit, and intention, of the rules of conduct, which had been eſtabliſhed for his guidance, or for that of the Officers acting under his control, in the adminiſtration of Juſtice, Civil and Criminal; in the eſtabliſhment of an efficient Police; in the ſettlement and collection of the Public Revenue; in the maintenance of the rights of Proprietors and Farmers of Land, and of their Under-Tenants; and, generally, in the execution of all functions appertaining to the Judicial and Revenue Officers of this Government. He is ſenſible, however, that any practical knowledge of the exiſting Regulations, which he may have acquired by the opportunity thus afforded him, in common with many of his fellow Servants more capable of profiting by it, has not qualified him to expound the Laws, which have been enacted for the internal Government of the

the extenſive and populous Territories, now immediately ſubject to the Chief Seat of Britiſh Authority in India; or to enter upon a courſe of ſyſtematic inſtruction in the fundamental principles, and elementary proviſions of thoſe Laws, ſuch as would prove ſatisfactory to others, or to himſelf. The obſervation of the Commentator on the Laws of England, applied to education for the Bar by practice only, without previous regular inſtruction in the rudiments of legal knowledge, is equally applicable to a perſon, deriving the whole of his acquaintance with the Laws of India from a practical obſervance of the operation of them. "If practice "be the rule he is taught, practice muſt alſo be the whole "he will ever know: if he be uninſtructed in the elements "and firſt principles upon which the rule of practice is founded, the leaſt variation from eſtabliſhed precedents will totally diſtract and bewilder him. *Ita lex ſcripta eſt*, is the "utmoſt his knowledge will arrive at; he muſt never aſpire "to form, and ſeldom expect to comprehend, any arguments "drawn *a priori*, from the ſpirit of the Laws, and the natural "foundations of Juſtice."

To remedy the defect thus deſcribed by Sir W. BLACKSTONE,* he propoſed "the making Academical Education a "previous ſtep to the profeſſion of the Common Law, and, "at the ſame time, making the rudiments of the Law a part "of Academical Education:" a ſuggeſtion obviouſly and forcibly appoſite to the Laws of Britiſh India, and to the Inſtitution expreſsly founded "for the better inſtruction of "the Junior Civil Servants of the Honorable the Engliſh "Eaſt India Company, in the important duties belonging "to the ſeveral arduous Stations, to which the ſaid Junior "Civil Servants may be reſpectively deſtined, in the adminiſtration of Juſtice, and in the general Government of the "Britiſh Empire in India."†

* In his excellent Introductory Diſcourſe on the ſtudy of the Law, page 32.
† Title of Regulation IX, 1800.

BUT

But it is further remarked by the Vinerian Profeſſor of the Laws of England, who addreſſed the Univerſity of Oxford, and inculcated the ſtudy of thoſe Laws in that Univerſity, that the "Sciences are of a ſociable diſpoſition, and flouriſh beſt "in the neighbourhood of each other; nor is there any "branch of learning, but may be helped and improved by "aſſiſtances drawn from other arts. If therefore the Student "in our Laws hath formed both his ſentiments and ſtyle by "peruſal and imitation of the pureſt *Claſſical* writers, amongſt "whom the hiſtorians and orators will beſt deſerve his re-"gard; if he can reaſon with preciſion and ſeparate argument "from fallacy, by the clear ſimple rules of pure unſophiſti-"cated *logic;* if he can fix his attention, and ſteadily purſue "truth through the moſt intricate deduction, by the uſe of "*Mathematical* demonſtrations; if he has enlarged his con-"ceptions of nature and art by a view of the ſeveral branches "of genuine *experimental philoſophy;* if he has impreſſed on "his mind the ſound maxims of the *law of nature*, the beſt "and moſt authentic foundation of human Laws; if, laſtly, "he has contemplated thoſe maxims reduced to a practical "ſyſtem in the *laws of Imperial Rome;* if he has done this, "or any part of it, a Student thus qualified may enter upon "the ſtudy of the Law with incredible advantage and re-"putation."

It was, in like manner, the intention of the Noble Founder of the College of Fort William, as ſtated in his diſcourſe at the late annual Meeting for the diſtribution of Prizes and Honorary Rewards*, "to have provided ſufficient means of in-"ſtruction for the Students in the principles of general ju-"riſprudence, and of the Law of Nations; connecting that "courſe of ſtudy with the principles of the Mahomedan and "Hindoo Law; and with thoſe of the wiſe and ſalutary code

* Held before His Excellency Marquess Wellesley, as Viſitor of the College, on the 11th February, 1805.

"of

" of Laws, introduced by that great and worthy Stateſman, the " MARQUESS CORNWALLIS, for the adminiſtration of theſe Pro- " vinces; and improved and extended by ſucceeding Govern- " ments, with the aid of the talents, knowledge and virtues " of Sir GEORGE BARLOW." But it is much to be regretted that circumſtances have prevented the inſtitution of a regular courſe of Lectures on the general principles of Juriſprudence, and of the Law of Nations. The ſuſpenſion of this part of the Original Plan for the College neceſſarily precludes, at preſent, any attempt to connect the ſtudy of the ſeveral local codes with that of general Law; except, as recommended in the diſcourſe referred to, by the private peruſal of the moſt approved elementary works upon the Laws of Nature, and of Nations; a knowledge of which " will prove " of the utmoſt advantage in every department of this Ser " vice. To thoſe deſtined for the Judicial Department the " neceſſity of ſuch a courſe of ſtudy is obvious and incon- " trovertible. But in every department of the Service, the " knowledge of the leading maxims of general Law will tend " to ſecure a due obſervance not only of the Regulations of " the Government; but of the principles of univerſal juſtice " and equity towards every claſs of our numerous and va- " rious Subjects, and of all the Native Inhabitants of India."

DIVESTED from this part of the original object, co-extenſive with the general views of the great Perſonage, who founded a Collegiate Inſtitution at this Preſidency, for the political and benevolent purpoſes ſet forth in the preamble to the Regulation which eſtabliſhed it, the Profeſſor, intended by the rules for that Inſtitution, of the Laws and Regulations enacted for the Civil Government of the Britiſh Territories in India, would ſtill have an important duty to perform, in delivering a regular courſe of Lectures, on the principles and various proviſions of this already voluminous, and yearly increaſing Code; the general objects of which, to be explained and

developed

developed by ſuch a courſe, are, as expreſſed in the Viſitor's Diſcourſe before mentioned, "the due diſtribution of the "Legiſlative, Executive, and Judicial Authorities of the State; "the eſtabliſhment of an impartial adminiſtration of Juſtice, "according to the exiſting Laws; and the proviſion of gra-"dual means for the improvement of thoſe Laws." But the daily occupation of indiſpenſable official duties, as well as an unfeigned ſenſe of inability to do juſtice to the functions of a public Lecturer upon the Regulations, would not admit of this office being undertaken, by the perſon who has been unexpectedly honored with the ſtation of "Profeſſor of "the Laws and Regulations of the Britiſh Government in "India." At the ſame time, his having been diſtinguiſhed by a ſelection, which he could not but eſteem highly flattering to him, added to an earneſt deſire of contributing any aid in his power to promote the objects of an excellent public Inſtitution, made him anxious to deviſe ſome practicable means of promoting the ſtudy of the Regulations in the College of Fort William; and after conſideration of the ſubject, during a ſhort intermiſſion of Judical duties, the following Plan of an Elementary Analyſis, of the Laws and Regulations enacted by the Governor General in Council, deſigned for the uſe and aſſiſtance of the Junior Civil Servants of the Company, in acquiring a competent knowledge of thoſe Regulations, before they enter upon the Public Service, was ſubmitted to His Excellency the Patron and Viſitor of the College; who having been pleaſed to honour it with his approbation, it is now, at his deſire, commenced; and *(favente Deo)* will be gradually completed, as occaſional leiſure from official avocations may admit. It is neceſſary to premiſe however, that the Plan only, as here ſtated, has been ſeen and approved by the Governor General; that the Work itſelf has not been ſubmitted for the ſanction of Government; and conſequently that it is not to be conſidered official, or bearing any authority beyond what it may be found to merit

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from it's correſpondence with the Public Regulations to which it refers.

THE three principal Branches of the Public Adminiſtration, committed to the Agency of the Eaſt India Company's Servants at this Preſidency, (excluſive of the Political and Diplomatic, which being diſtinct from the internal Government, and depending more immediately upon the Governor General, have not been provided for by any Regulation) are the Judicial, Revenue, and Commercial. This Analyſis is therefore divided into Parts, having reference to each of thoſe Departments; and as the preſcribed period of ſtudy in the College of Fort William is three years, and two Public Examinations are directed to be holden annually*; the entire Work is meant to conſiſt of Six Parts, in the following order.

PARTS I, and II, to have reference to the Judicial Department, Civil and Criminal; and to include (beſides the general Legiſlative Proviſions upon which the preſent Code of Regulations is founded) a conciſe elementary ſtatement of the principal Rules which have been enacted for the adminiſtration of Civil and Criminal Juſtice, and for the Police; or for objects connected therewith; the general principles upon which ſuch Rules appear to have been framed; and any material alterations of, or additions to, the original Rules, which have taken place under Regulations ſubſequently enacted.

PARTS III, and IV, to have reference to the Revenue Department; and to contain a ſimilar Statement and Explanation of the Regulations paſſed for the Settlement and Collection of the ſeveral branches of the Public Revenue; for defining the powers and duties of the Officers employed in the Revenue Department; for ſecuring the rights and tenures of the Proprietors and Tenants of Land; for enabling Landhol-

* Vide Sections XVIII, and XXIII, Regulation IX, 1800.

ders and Farmers to realize their Rents with punctuality; and generally for all objects connected with the adminiſtration of the Public Revenue; or the Land Tenures and Rents of the Country.

PART V. To refer to the Commercial Department; and to include a like ſpecification of the rules eſtabliſhed for the proviſion of the Company's Inveſtment; or for the guidance of the Officers employed in the Commercial Department; for the manufacture and ſale of Salt and Opium; or for the regulation and collection of the Cuſtoms; with ſuch comment upon theſe ſubjects reſpectively, as may appear requiſite, to explain the principles on which the exiſting proviſions regarding them have been judged expedient.

PART VI. To be Miſcellaneous; relating to all matters of importance in the Regulations, which ſhall not have been included in the preceding Parts; and to be accompanied with a ſimilar illuſtration, as far as neceſſary, of the reaſons of juſtice, or policy, which appear to have dictated the proviſions made for them.

SUCH deficiencies, as may occur in the firſt execution of this plan, will be ſupplied in a future improved Analyſis; if the work ſhould be found to anſwer the purpoſe intended by it. In the mean time, it is hoped, that due allowance will be made for the imperfections of a firſt attempt, undertaken, on the ſpur of the occaſion, amidſt the conſtant avocations of high and arduous public duties, and without the advantages uſually poſſeſſed, in a profeſſional education, and the aid of antecedent works of a ſimilar nature. The Author of this humble attempt to illuſtrate, and advance the knowledge of, the Laws of the Britiſh Empire in India, has indeed before him the *Commentaries on the Laws of England*; to which he has already referred; and in which the province

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of an academical Expounder of the Laws is thus, in part, deſcribed. "He ſhould conſider his courſe as a General Map "of the Law, marking out the ſhape of the country, it's con- "nexions and boundaries, its greater diviſions, and principal "cities. It is not his buſineſs to deſcribe minutely the "ſubordinate limits, or to fix the longitude and latitude of "every inconſiderable hamlet. His attention ſhould be enga- "ged, like that of the readers in FORTESCUE's inns of Chance- "ry, in tracing out the originals, and as it were the Elements "of the Law." But it muſt be manifeſt to every perſon who has examined the Regulations of the Britiſh Government in India, that, however excellent in their nature, and admirably adapted, as they are, for the objects intended by them; the matter of the greater part of them cannot, as a ſcience, be brought in compariſon with the Laws of England. By far the larger proportion of them contain rules of conduct, for the public Officers employed in the ſeveral Departments of the Civil Service; which, however neceſſary to be known by the perſons to be employed in this ſervice, and therefore, with the utmoſt propriety, made part of the ſtudies which are to qualify the junior Civil Servants of the Company for the diſcharge of their future duties, could not perhaps, with the advantage of ſuperior abilities, general knowledge, and ſufficient leiſure for the purpoſe, be embodied in a courſe of lectures, that would admit of the moſt diſtant imitation of the elegant, comprehenſive, inſtructive work of BLACKSTONE; which, as remarked by his Editor, now "forms an eſſential part of every Gentle- "man's library;" and from its lucid arrangement, pure language, and clear intelligible explanation of each diſtinct ſubject, is calculated to yield equal pleaſure and improvement.

THE orderly peruſal, and attentive ſtudy, of the Regulations themſelves, muſt be the principal means of acquiring an accurate knowledge of them. The ſole aim and ſcope of this Analyſis are, to aſſiſt ſuch peruſal: to facilitate ſuch ſtudy;

and

and by the aid ſo given, to promote the attainment of a more perfect knowledge of the Code of Laws, adminiſtered by the Servants of the Eaſt India Company, (through whoſe mediation they are alſo the public Officers of the State,) in this extenſive and valuable portion of the Britiſh Empire.

To the Students of the College of Fort William, it cannot be requiſite to add any argument, advice, or encouragement, to convince them of the neceſſity of acquiring a correct knowledge of the Laws and Regulations in force at this Preſidency, for the purpoſe of enabling them to diſcharge their future duties in the Public Service; to perſuade them of the ſatisfaction, credit, and advancement, which muſt attend their poſſeſſing this qualification, in addition to the other means furniſhed by the College, of rendering themſelves competent and diſtinguiſhed Public Officers; or to ſtimulate their application to this courſe of ſtudy, by the proſpect of immediate advantage and diſtinction, to thoſe who ſhall purſue it with diligence and ſucceſs; ſuch as ſhall entitle them to the rewards and honors promiſed, in the late diſcourſe from the Viſitor, to "thoſe Students who ſhall appear at the Examinations to have "obtained eminent knowledge of the Laws and Regulations, "which they are deſtined to adminiſter in their ſeveral ſta-"tions, to the people of theſe extenſive Provinces." The diſcourſe referred to, which every Student, preſent and future, would do well to impreſs upon his memory, contains all that could be ſaid, with effect, upon theſe topicks; and the following quotation from it, compriſing the moſt honorable teſtimony to the real merits of the Code of Regulations, which form the ſubject of the ſubſequent Analyſis, will afford a ſuitable concluſion to theſe introductory remarks. "Subject to the com-"mon imperfection of every human Inſtitution, this ſyſtem of "Laws is approved by practical experience, (the ſureſt teſt of "human Legiſlation,) and contains an active principle of "continual reviſion, which affords the beſt ſecurity for pro-

greſſive

" greſſive amendment. It is not the effuſion of vain theory,
" iſſuing from ſpeculative principles, and directed to viſionary
" objects of impracticable perfection; but the ſolid work of
" plain, deliberate, practical benevolence; the legitimate
" offspring of genuine wiſdom, and pure virtue. The excel-
" lence of the general ſpirit of theſe Laws is atteſted by the
" nobleſt proof of juſt, wiſe, and honeſt Government; by the
" reſtoration of happineſs, tranquillity and ſecurity, to an op-
" preſſed and ſuffering people; and by the revival of agricul-
" ture, commerce, manufacture, and general opulence, in a
" declining and impoveriſhed Country."

FIRST PART.

SECTION I.

GENERAL LEGISLATIVE PROVISIONS.

Origin of the exiſting code of Bengal Regulations.

THE ſyſtem of law and regulation, diſtinguiſhed by the high and juſt encomium of His Excellency the preſent Governor General, who has conſiderably added to it, as well as extended it to the ceded and conquered provinces, which have been annexed to the Britiſh Empire during the ſplendid period of his government, owes its origin and foundation to the political wiſdom, juſtice, and humanity, of the MARQUESS CORNWALLIS; whoſe exalted character will be alike perpetuated, by his glorious atchievements in arms; by a life devoted to the intereſts and honor of his country; and by this memorial of his able, virtuous, and beneficent adminiſtration in India.

State of rules and orders in force before the year 1793.

PREVIOUSLY to the year 1793, the territorial poſſeſſions of the Eaſt India Company were without a general code of Britiſh laws and regulations. Many rules and orders were indeed paſſed by ſucceſſive governments, (from the appointment of Mr. HASTINGS to be Governor of Bengal in 1772,) for the adminiſtration of juſtice, the collection of revenue, and other objects of a public nature. During the preceding

twelve years ſome regulations had alſo been printed, with tranſlations in the country languages: but others ſtill remained in manuſcript; and thoſe printed were, for the moſt part, on detached papers; without any preſcribed form, or order; and conſequently not eaſily referred to, even by the officers of government; much leſs by the people at large; who had no means of procuring them in a collective ſtate; or of becoming acquainted with ſuch of them as had not been promulgated in the current languages.

Imperfect ſyſtem of municipal law in conſequence.

A PRIMARY and eſſential duty of every juſt government towards its ſubjects, that of publiſhing and enforcing an equitable ſyſtem of law, adapted to their actual condition and circumſtances, and calculated to protect them in the ſecure enjoyment of their rights, natural and acquired; "a rule of "civil conduct, commanding what is right, and prohibiting "what is wrong;" as municipal law is defined and explained by BLACKSTONE;* or as CICERO has expreſſed it, "*Sanctio "juſta, jubens honeſta, et prohibens contraria*;" † was thus in a great degree omitted, or imperfectly performed, towards the natives of an extenſive territory; which, by ceſſion or conqueſt, had, through the chartered agency of the Eaſt India Company, become ſubject to the crown and ſovereignty of Great Britain.

Aſcribable to circumſtances which have attended the eſtabliſhment of the Britiſh Empire in theſe Provinces.

THIS will not appear extraordinary if the gradual eſtabliſhment of the Britiſh authority in theſe territories be adverted to. From the year 1640, when two ſhips from England to Bengal opened the trade of the London Eaſt India Company to this part of India, under a patent for exemption from cuſtoms, obtained from the Emperor SHAH JAHAN ‡; until the

The Company's Factories in

year 1707, when Calcutta was declared a Preſidency, account-

* See BLACKSTONE's ſecond Introductory Section, on "the nature of Laws in general."

† 11 PHILIP. 12, quoted alſo in BLACKSTONE, B. 1. C. 1.

‡ By a Surgeon, named BOUGHTON, ſent to attend the Emperor's daughter, from Surat. Vide ORME, V. 2, p. 8.

able

able only to the Direction in England *; the Company's factories, firſt at Hooghly, afterwards in Calcutta, and its adjacent villages, Sootanutty and Govindpoor, (the taloocdary right to which, ſubject to an annual revenue of 1195 rupees, the prince ÂZEEM-OO-SHA'N, grandſon of AU'RUNGZE'B, and Soobahdar of Bengal, Behar, and Oriſſa, allowed the Company's agents to purchaſe in the year 1698, †) were dependent upon the preſidency of Madras; where the Company had a fort and garriſon, which they had not been permitted to maintain in Bengal. Their tranſactions during this period were entirely commercial; and though the United Company, in the year 1717 ‡, obtained a firman from the Emperor FURUKHSEER, granting them, beſides privileges of trade, permiſſion to purchaſe the taloocdary of thirty-eight additional villages, contiguous to the three before held by them, ſubject to an annual revenue of 8121 Rupees; (which grant was fruſtrated by the influence and oppoſition of the Soobahdar JÂFUR KHA'N;) no independent authority was thereby conveyed to them; nor does any appear to have been claimed under it; or under the *huſh-ool-hookms* || which were iſſued by the king's miniſter in conformity with it.

Bengal dependent upon the Madras Preſidency till 1707.

Nature of Firman granted by the Emperor of Hindooſtan in 1717.

THE Treaty with SURA'J-OD-DOU'LAH, in February 1757, after the recapture of Calcutta, by the fourth article of which the Company were "allowed to fortify Calcutta in ſuch man-

Independency of the Company's Settlement at Calcutta, eſtabliſhed by the Treaty with

* ORME, V. 2, p. 18.

† ORME, V. 2, p. 17.

‡ Through the embaſſy of Meſſrs. SURMAN and STEPHENSON; accompanied by an Armenian merchant, named SURHAD, and another ſurgeon Mr. HAMILTON, whoſe medical aſſiſtance to the Emperor promoted the object of their embaſſy. See ORME, Vol. II, page 19, &c. and a copy and tranſlation of the firman granted by FURUKHSEER, in the Appendix to "BOLTS on India Affairs."

|| Correſponding grants, literally "according to order." Tranſlations of them, and of the firman, are annexed to the firſt report of the ſelect committee, appointed by the Houſe of Commons in 1772, to enquire into the nature, ſtate, and condition of the Eaſt India Company and of the Britiſh affairs in the Eaſt Indies. The reports of this committee, and of the committee of ſecrecy appointed in the following year, contain much authentic and valuable information reſpecting the acquiſition and early adminiſtration of theſe provinces, not readily to be found elſewhere.

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Suráj-oo-Doulah, in 1757.

" ner as they might eſteem proper," and by the fifth article of which it was ſtipulated, " that ſiccas be coined at Alinagur " (Calcutta) in the ſame manner as at Moorſhedabad;" concluding with a " promiſe in behalf of the Engliſh " nation, and of the Engliſh Company, that from hence- " forth all hoſtilities ſhall ceaſe in Bengal, and the Engliſh " will always remain in peace and friendſhip with the Nawáb, " as long as theſe articles are kept in force, and remain un- " violated *;" may be conſidered to have eſtabliſhed the independency of the Company's ſettlement at Calcutta. And the victory gained at the memorable battle of Plaſſey, on the 23d June of the ſame year, with the conſequent elevation of JÂFUR ÂLY KHA'N to the government of Bengal, Bahar, and Oriſſa, by Colonel CLIVE, and the Britiſh army under his command, muſt be deemed a virtual ſubjugation of thoſe provinces to the arms and ſovereignty of Great Britain. In the previous treaty however, which had been entered into with JÂFUR ÂLY KHA'N †, the ceſſion of the French factories, with an extenſion of the Company's zemindary, ſix hundred yards without the ditch of Calcutta, and to the land lying ſouth of Calcutta as far as Culpee, had alone been ſtipulated for; beſides a confirmation of the former agreement with SURA'J-OO-DOU'LAH, and a conſideration for the public and private property plundered by him at the capture of Calcutta in 1756; with the further conditions, that whenever the Nawáb ſhould demand the aſſiſtance of the Engliſh he ſhould be at the charge of maintaining them; and that he ſhould not erect any new fortifications below Hooghly, near the river Ganges.

And Provinces of Bengal, Behar, and Oriſſa, virtually ſubjugated to the Sovereignty of Great Britain by the battle of Plaſſey, and its conſequences.

But not acknowledged by the previous Treaty with Jâfur Aly Khán.

Diſtricts of Burdwan, Midnapore, and Chittagong, ce-

IN the treaty concluded with the Nawáb MEER MOHUMMUD CA'SIM KHA'N, on the 27th September 1760, it was agreed, that

* A tranſlation of this treaty is inſerted in the appendix to " VERELST's ſtate of Bengal," and in other publications.

† On the 4th June 1757. The work mentioned in the preceding note contains a tranſlation of this treaty alſo.

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the *Neeábut* * of the Soobahdary of Bengal, Bahar, and Oriſſa, ſhould be conferred upon him; and that he ſhould ſucceed JÂFUR ÂLY KHA'N in the government; that the Engliſh army ſhould be ready to aſſiſt him in the management of all affairs, and that the lands of the chuklahs (diſtricts) of Burdwan, Midnapore, and Chittagong, ſhould be aſſigned for all charges of the Company, and the army, including proviſions for the field. The nature of this aſſignment is further explained in the ſunnuds from the Soobahdar, wherein the above diſtricts are ſtated to be granted to the Engliſh Company for the maintenance of a body of troops, to be entertained for the protection of the royal dominions; and the landholders, tenants, and public officers, are required to attend and pay the ſtated revenues, to the perſons appointed by the Engliſh Company; and implicitly ſubmit in all things to their authority. This therefore was a full and complete ceſſion of the three diſtricts ſpecified; and in the treaty with JÂFUR ÂLY KHA'N, for his reinſtatement, dated the 10th day of July 1763†, he "granted and "confirmed to the Company, for defraying the expences of "their troops, the chuklahs of Burdwan, Midnapore, and "Chittagong which were before ceded for the ſame pur-"poſe."

ded by Cáſim Âly Khán, in 1760.

And ceſſion confirmed by treaty with Jâfur Âly Khán, in 1763.

AFTER the expulſion of CÁSIM ÂLY KHA'N, and the deciſive battle of Buxar on the 23d October 1764, which, by the defeat of SHOOJÁÂ-OO-DOU'LAH, Soobahdar of Oud, finally eſtabliſhed the Britiſh power to the banks of the Caramnaſſa; and placed under its protection the unfortunate SHÁH ÂÁLUM, nominal ſucceſſor to the throne of Delhy; the Dewany of Bengal, Bahar, and Oriſſa, including the adminiſtra-

Britiſh Power finally eſtabliſhed by the battle of Buxar.

Dewany grant obtained from the King, Shâh Âálum, in 1765.

* Station of Deputy. Tranſlations of the treaty, and of the ſunnuds iſſued in purſuance of it, will be found in the appendix to the treatiſe before mentioned. The muſnud of the Soobah being afterwards abdicated by JÂFUR ÂLY KHA'N, MEER MOHUMMUD CA'SIM, otherwiſe called CA'SIM ÂLY KHA'N, was raiſed to it, by Mr. VANSITTART and Colonel CAILLAUD, on the 20th October 1760.

† See the Appendix before noticed.

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tion of the public revenue, and of civil juſtice, with the whole of the powers exerciſed by the Soobah Dewan, under the Mogul conſtitution; and in this inſtance, the further ſpecial privilege of retaining the ſurplus revenue of the above provinces, after remitting the ſum of twenty-ſix lacks of rupees per annum to the royal treaſury, and providing for the expences of the Nizamut; was granted, as a free gift and ultumgha*, to the Company, by firmans from the King dated the 12th Auguſt 1765. A firman was alſo granted, at the ſame time, for the chuklahs of Burdwan, Midnapore, and Chittagong, ceded by CÁSIM ÂLY KHÁN; and for the twenty-four pergunnahs, of which the zemindarry right had been granted by JÁFUR ÂLY KHÁN; confirming them to the Company, as a free gift and ultumgha, in perpetuity.

With confirmation of former ceſſion and grant from the Soobahdars.

Agreements with Nujum-oo-Doulah, in 1765.

The Nuwáb NUJUM-OO-DOU'LAH, (who, on the death of his father JÁFUR ÂLY KHÁN in February 1765, had ſucceeded to the Soobahdarry of Bengal, Bahar and Oriſſa, under an agreement† to commit the chief management of all affairs to a Naib Soobahdar, appointed with the advice of the Governor and Council; as well as to appoint and diſmiſs all officers employed in the collection of the revenues, with the approbation of the Governor and Council;) by a further agreement, bearing date the 30th September 1765, acknowledged the King's grant of the Dewany to the Company; and agreed to accept the annual ſum of ſicca rupees 53,86,131 as an adequate allowance for the ſupport of the Nizamut, viz. rupees 17,78,854 for his own houſehold expences, ſervants, &c. and the remaining 36,07,277 for the maintenance of ſuch horſes, ſepoys, peons, burkundazes, &c. as might be thought neceſſary for his ſewary and the

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* A royal grant in perpetuity, under the Emperor's *red* ſeal, from which its name is derived. Tranſlations of the firmans iſſued for the three provinces, ſeparately and collectively; for the diſtricts ceded by CA'SIM ÂLY KHÁN; and for the zemindarry of the twenty-four pergunnahs obtained by the firſt treaty with JÂFUR ÂLY KHÁN; are included in VERELST's appendix; as well as in the appendix to the firſt report of the ſelect committee, 1773.

† Executed on the 25th February 1765. See tranſlations of this, and of his further agreement in the ſame year, No. 52 and 60, in VERELST's appendix; alſo in the appendix to the firſt report of the ſelect committee, 1773.

ſupport

ſupport of his dignity; ſhould ſuch an expence (the amount of which, not exceeding the above ſum, to be diſburſed through the Naib choſen by the Engliſh government;) be hereafter found requiſite.

FROM this period the Nazim of Bengal, thoſe [illegible] tives of juſtice and expediency, allowed to [illegible] and in ſome meaſure the dignities, of his [illegible] garded only as a penſioner of ſtate. The [illegible] power of the country, with the reſources [illegible] were transferred to the Eaſt India Compan[illegible] their means, to the Britiſh Empire*. It w[illegible] judged adviſable, either by the local governm[illegible] Court of Directors, and perhaps was not p[illegible] actual ſtate of the Company's ſervice, at the tim[illegible] ring the Dewany, to veſt the immediate admini[illegible] revenue, or of civil and criminal juſtice, in Euro[illegible] cers †. A reſident at the Durbar, who inſpected the [illegible] ment of the Naib Dewan, MOHUMMUD RUZĀ KHĀN, [illegible] coadjutors, DOOLUBRAM and JUGUT SEET, at Moorſh[illegible] and the chief of Patna, who ſuperintended the collections of the province of Bahar, under the immediate management of SHITĀB RĀY; maintained an imperfect control, for five years, over the civil adminiſtration of the diſtricts included in the Dewany grant; whilſt the zemindary lands of Calcutta, and the twenty-four Pergunnahs, and the ceded diſtricts of Burd-

* That the ſovereignty of the Britiſh crown and legiſlature extends to all acquiſitions made by the Eaſt India Company, has never been queſtioned; and it has been determined by the Houſe of Commons "that all acquiſitions, territories &c. made by arms, or by treaty, by "the ſubjects of the realm, do, of right, belong to the State." But this deciſion does not affect the legal acknowledged title of the Company to all proprietary rights acquired by purchaſe, or by any other lawful means, except by arms or treaty, under their perpetual incorporation by Charter, founded upon Acts of Parliament. Vide "Plans for the Government and Trade of Great Britain in the Eaſt Indies." P. 100, &c.

† See the reaſons fully detailed in the correſpondence between the Honorable Court of Directors, and the Preſident and Council, or Select Committee, at Fort William, [illegible] in the reports of the Houſe of Commons already referred to; alſo in [illegible] VERELST's Narrative.

wan, Midnapore, and Chittagong, were ſuperintended by the covenanted ſervants of the Company. In 1770, European ſupervifors were appointed, with powers of controlling the native officers employed in collecting the revenue, or adminiſtering juſtice, in different parts of the country; and councils, with ſuperior authority, were at the ſame time eſtabliſhed at Moorſhedabad and Patna, ſubordinate to the Supreme Council at the Preſidency. It was not however till the year 1772, when, in conſequence of the determination of the Court of Directors *, "to ſtand forth as Dewan, and by the [illegible] of the Company's ſervants to take upon themſelves [illegible] care and management of the revenues," the [illegible] Naib Dewan was aboliſhed; that the efficient adminiſ[illegible] of the internal Government of theſe provinces was [illegible]tted to Britiſh agency. No time was then loſt in adopting [illegible]ſtures to correct abuſes; in providing againſt undue [illegible]s; and in making ſuch arrangements as circumſtances [illegible]d, for a more regular diſtribution of juſtice. The [illegible]e of circuit, headed by the Governor (Mr. HASTINGS,) [illegible] a plan for this purpoſe; the rules of which were [illegible] to have been framed with a view to adapt them "to [illegible]ſe manners and underſtanding of the people, and exigencies [illegible] of the country, adhering, as cloſely as poſſible, to their ancient uſages and inſtitutions †;" and which, with the regulations ſubſequently paſſed, for the eſtabliſhment and juriſdiction of courts of civil juſtice, will be more particularly noticed in the next ſection of this analyſis.

Acts of the Britiſh Legiſlature, which relate to the ſubject of this ſection.

In the mean time it is neceſſary to mention conciſely the acts of the Britiſh Legiſlature, which have an immediate relation to the ſubject of the preſent ſection; commencing with the regulating act of 1774, which was founded on the inquiry of

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* [illegible]municated in their letter to the Preſident and Council at Fort William, dated 28th [illegible] Vide Fifth Report of the Committee of Secrecy, 1773.

†, to the Fifth Report of the Committee of Secrecy, 1773.

Parliament,

Parliament, relative to the management of the affairs of the Eaſt India Company, made in the two preceding years.

By this Statute (13 George III, Chapter LXIII,) it was enacted, " that for the government of the preſidency of Fort " William in Bengal, there ſhould be appointed a Governor " General, and four Counſellors; and that the whole civil and " military government of the ſaid preſidency, and alſo the " ordering, management, and government of all the territo- " rial acquiſitions and revenues in the kingdoms of Bengal, " Bahar, and Oriſſa, ſhall, during ſuch time as the territorial " acquiſitions and revenues ſhall remain in the poſſeſſion of " the United Company, be veſted in the ſaid Governor Gene- " ral and Council; in like manner, to all intents and pur- " poſes whatſoever, as the ſame are, or at any time hereto- " fore might have been, exerciſed by the Preſident and Coun- " cil, or ſelect Committee, in the ſaid kingdoms." The Governor General and Council were further inveſted with the " power of ſuperintending and controling the government " and management of the Preſidencies of Madras, Bombay " and Bencoolen;" under certain reſtrictions; and the King was empowered " to erect and eſtabliſh a Supreme Court of " Judicature at Fort William, to conſiſt of a Chief Juſtice and " three other Judges, being Barriſters of England or Ireland " of not leſs than five years ſtanding;" inſtead of the Mayor's Court, eſtabliſhed by Letters Patent from His Majeſty George II; which had been found inſufficient for the due adminiſtration of juſtice in the actual ſtate and condition of this preſidency.

By the Statute above mentioned, and by the ſubſequent explanatory Statute 21 George III, Chapter LXX, which more accurately defines the juriſdiction of the Supreme Court, with a reſtriction of the laws and uſages of the Inhabitants of Calcutta in caſes of " inheritance

The laws of England extend to this country as far as applicable, by the ſtatute above mentioned, which eſtabliſhed the Supreme Court at Calcutta, a

by the ſubſequent acts, 21 Cap. LXX, 24 Cap. XXV, and 26 Cap. LVII, of His Majeſty.

" ſion to lands, rents, and goods, and all matters of con-
" tract and dealing between party and party, as well as the
" rights and authorities of fathers and maſters of families;"
the benefits of the laws of England, as far as applicable to this country, were extended by the legiſlature to all perſons reſiding within the town of Calcutta; as well as to Britiſh ſubjects (natives of Great Britain, or their deſcendants) reſident in any part of the provinces of Bengal, Behar, and Oriſſa. Certain deſcriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of His Majeſty's Britiſh ſubjects, are alſo declared, by the acts above mentioned, amenable to the juriſdiction of the Supreme Court, in criminal caſes; as well as in actions for wrongs or treſpaſſes; and in civil ſuits by agreement of parties, in writing, to ſubmit the ſame to the deciſion of that Court; the juriſdiction of which is further extended over all His Majeſty's Britiſh ſubjects in India, or elſewhere within the limits of the Company's excluſive trade, by the Statutes 24 GEORGE III, Chapter XXV, and 26 GEORGE III, Chapter LVII.

e general duction of ſh laws in- ompatible with ocal circum- ſtances.

BUT the fixed habits, manners, and prejudices, and the long eſtabliſhed cuſtoms of the people of India, formed under the ſpirit and adminiſtration of an arbitrary Government, totally oppoſite in principle and practice to that of England, would not admit of a more general application of Britiſh laws to the inhabitants of this country; who not only are ignorant of the language in which thoſe laws are written; but could not poſſibly acquire a knowledge of our complex, though excellent, ſyſtem of municipal law; compoſed [illegible] of general and local Engliſh cuſtoms; partly of the civil and canon laws, adopted in particular juriſdictions; and partly of the voluminous ſtatutes, enacted by the King's Majeſty, with the advice and conſent of Parliament, during a period of more than

than five hundred years *. The impoſſibility of introducing Engliſh laws, as the general ſtandard of judicial deciſion in theſe provinces, without violating the fundamental principle of all civil laws, that they ought to be "ſuitable to the ge-"nius of the people, and to all the circumſtances in which "they may be placed †," has been ably ſtated by Mr. VERELST ‡, whoſe local knowledge and character (unſullied amidſt univerſal corruption, as teſtified, to his honor, by Lord CLIVE) entitles his opinion to reſpect. His ſentiments are alſo ſupported by thoſe of Sir JOHN SHORE (now Lord TEIGNMOUTH), whoſe perfect acquaintance with the inhabitants of India, added to his high and well-merited reputation, his eminent public and private virtues, muſt ever give weight to his deliberate ſuggeſtion, that "the grand object of our go-"vernment in this country ſhould be to concilitate the minds "of the natives; by allowing them the free enjoyment of all "their prejudices; and by ſecuring to them their rights and "property ||". Moreover, when the provinces of Bengal, Bahar and Oriſſa, were virtually conquered by the Britiſh arms, as well as when the civil government of them was formally veſted in the Company, by the Dewany grant, and the agreement with the Nuwáb NUJUM-OO-DOULAH in 1765, the inhabitants, Mahomedans as well as Hindoos, were in poſſeſſion of their reſpective written laws; under which they had acquired property, by deſcent, purchaſe, gift, and other modes of acquiſition; and which, from their religious tenets and prejudices, they had been educated and habituated to regard and venerate as ſacred §. The Mahomedan government, which preceded

Written laws in force when theſe provinces were acquired by the Company.

* See BLACKSTONE's third Introductory Section, on "the laws of England" P. 84.

† VATTEL, Book I. Cap. III. Alſo MONTESQUIEU's ſpirit of Laws. Book I. Cap. III. *et paſſim.*

‡ In the fifth Chapter of his "State of Bengal," expreſsly upon this Subject.

|| See his "Remarks on the mode of adminiſtering juſtice to the natives in Bengal; and on "the collection of the revenues," printed in the ſixth volume of "India Papers," 1787.

§ Let it not be forgotten, in juſtice to Mr. HASTINGS, that the knowledge we poſſeſs of theſe laws, originated from his liberal, and politic, encouragement to the compilation, and tranſlation, of a code of Hindoo Law; and to the tranſlation of an approved commentary upon the Mahomedan Law. HALHED's verſion of the former, made through a Perſian medium, is now,

preceded the Britiſh authority in India, had indeed eſtabliſhed its own criminal law, to the excluſion of that of the Hindoos. But from the long period, during which it had prevailed, it was, (in its principal and ſpecific proviſions at leaſt) become generally known; and afforded, as far as it was regularly adminiſtered, a ſettled uniform rule for criminal proſecution, trial, and puniſhment.

Wiſe proviſions of the Britiſh legiſlature in conſequence.

THE Britiſh legiſlature therefore, when its attention was called to examine and regulate the management of the affairs of the Eaſt India Company, as ſet forth in the preambles to the acts of His preſent Majeſty already referred to; inſtead of extending the local and complicated laws of England to the remote, populous, and long civilized territories, which had been gradually acquired by the Eaſt India Company, under former Acts of Parliament, and Charters from the King; wiſely reſolved to limit the adminiſtration of Engliſh law, over perſons who, from their diſtant ſituation, and other circumſtances, could not be admitted to the whole of the rights and privileges of Britiſh ſubjects *; and judged it ſufficient to enact the ſalutary proviſions contained in thoſe Statutes; by the former of which (13 GEORGE III, Chapter LXIII, Sections 36 and 37,) it was declared lawful "for the Governor General and Council

13 George III. Cap. LXIII, § 36, 37.

now, in a great degree, ſuperſeded by the "Ordinances of MENU" and "Digeſt of Hindú "Law," derived immediately from the Sanſcrit, by the talents, knowledge, and labours of Sir WILLIAM JONES, and Mr. H. T. COLEBROOKE: but Mr. HAMILTON's verſion of the "He- "daya," undertaken at the deſire of Mr. HASTINGS, is ſtill the only work, publiſhed in Engliſh, on the Moſulman Law; except the ſhort tracts on inheritance, tranſlated by Sir W. JONES; (who unhappily did not live to complete and illuſtrate the digeſt of Mahomedan and Indian Law, which had been commenced under his direction;) and SALE's verſion of the Coran, which, however accurate and valuable, is not calculated for legal reference.

* Were further authorities neceſſary, beſides thoſe which have been quoted, to ſhew the impolicy of extending the operation of Engliſh laws in India, beyond the limits to which they are now confined; and within which they are adminiſtered with the greateſt public advantage, by the Supreme Court of Judicature at Calcutta; Mr. HASTINGS, the Marqueſs CORNWALLIS, and indeed every experienced perſon, who has held any public ſtation in India, might be likewiſe appealed to. But the Legiſlature itſelf is evidently convinced of this truth; and there can be no doubt that it will be confirmed, as opportunity may offer, by the preſent intelligent and public ſpirited Judges of the Supreme Court; whoſe object has been rather to meliorate, than extend, its influence; to check expence and delay, and thereby to promote its means of juſtice, rather than to enlarge its juriſdiction.

"of

" of the United Company's ſettlements at Fort William in " Bengal, from time to time, to make and iſſue ſuch rules, or- " dinances, and regulations, for the good order and civil go- " verment of the ſaid United Company's ſettlement at Fort " William aforeſaid; and other factories and places ſubordinate, " or to be ſubordinate thereto, as ſhall be deemed juſt and " reaſonable; ſuch rules, ordinances, and regulations not being " repugnant to the laws of the realm." And by the latter Act (21, GEO. III, Cap. LXX, Section 23,) it was enacted " that the " Governor General and Council ſhall have power and au- " thority from time to time to frame regulations for the provin- " cial courts and councils; and ſhall within ſix months, after " the making of the ſaid regulations, tranſmit or cauſe to be " tranſmitted, copies of the ſaid regulations to the Court of " Directors, and to one of His Majeſty's principal Secretaries " of State; which regulations His Majeſty in Council may " diſallow or amend; and the ſaid regulations, if not diſallow- " ed within two years, ſhall be of force and authority to direct " the ſaid provincial courts, according to the tenor of the ſaid " amendment, provided the ſame do not produce any new " expenſe to the ſuitors in the ſaid courts." It was further provided in the act firſt mentioned, that the rules, ordinances and regulations made by the Governor General and Council, ſhould " not be valid, or of any force or effect, until the ſame " be duly regiſtered and publiſhed in the Supreme Court of " Judicature, with the conſent and approbation of the ſaid " Court; which regiſtry ſhall not be made until the expiration " of twenty days, after the ſame ſhall be openly publiſhed, and " a copy thereof affixed in ſome conſpicuous part of the " court houſe, or place where the ſaid Supreme Court " ſhall be held; and from and immediately after ſuch " regiſtry, as aforeſaid, the ſame ſhall be good and va- lid in law." But this and other reſtrictions, in the two clauſes quoted, muſt be conſidered, under the ſubſequent acts of parliament, to have excluſive reference to the town of Calcutta, technically, though ſomewhat inaccurately denominated the ſettlement of Fort William and its ſubordinate factories;

Governor General and Council empowered to make rules, ordinances, and regulations for the good order and civil government of the Company's ſettlement at Fort William.

21, GEO. III. Cap. LXX, § 23. And to frame regulations for the provincial courts and councils.

tories; to provide for the good order of which by a local power to frame any requiſite rules and regulations, not repugnant to the laws of England, appears indeed to have been the principal if not the only object of the thirty-ſixth, and thirty-ſeventh ſections of the Statute 13, GEORGE III, Chapter LXIII. *

Authority of the Government General, and of the Governments at Fort St. George and Bombay, to make general rules and regulations for the good order and civil government of theſe ſettlements further recognized by 33 Geo. III, Chapter LII.

THE authority of the Governor General in Council at Fort William, and the ſubordinate power of the Governor and Council at Fort St. George and Bombay, "to make "any general rule or regulation for the good order and "civil government of thoſe ſettlements reſpectively," are further recognized by the Statute 33, GEORGE III, Chapter LII, which defined the conſtitution and powers of the Board of Control, eſtabliſhed by 24, GEORGE III, Chapter XXV, "to "ſuperintend, direct, and control, all acts, operations, and con- "cerns, which in any wiſe relate to the civil or military govern- "ment, or revenues, of the Britiſh territorial poſſeſſions in the Eaſt Indies," and has determined the general ſyſtem of government for the Britiſh territories in India; to be conducted, under the renewal of the Company's charter in 1793, by an efficient local authority; ſubject to high reſponſibility in England; to the direction and control of the Honorable Court of Directors, and the Board of Commiſſioners of His Majeſty's Privy Council; and to the general ſuperintendence, with ſuch interpoſition as circumſtances may render neceſſary, of the Parliament of the United Kingdom.

Which has determined the ſyſtem of government for the Britiſh territories in India, under the renewal of the Company's charter in 1793.

Additional and expreſs ſanction given, to the exerciſe of a local power of legiſlation at this preſidency, by

THE following additional and expreſs ſanction, to the exerciſe of a local power of legiſlation at this preſidency, has alſo been ſince declared by the eighth ſection of the Act 37,

* The various opinions entertained of the extent of the legiſlative powers, meant to be veſted in the Governor General and Council, by the act of 1773, with the uncertainty of even a Committee of the Houſe of Commons, as to the exact intention of the 36th ſection of that act, may be ſeen in the firſt report of the ſelect Committee appointed in 1781, and its Appendix. But the proviſions, that the rules and ordinances to be made under that ſection, ſhould not be repugnant to the laws of the Realm, and ſhould be regiſtered and publiſhed in the Supreme Court, with the approbation of that Court, appear applicable only to a juriſdiction where the laws of England are adminiſtered. And all neceſſity for a more extenſive conſtruction of any part of the Statute 13, GEORGE III, Ch. LXIII, is now ſuperſeded by the explicit declarations of the legiſlature in 21, GEORGE III. Ch. LXX. and 33, GEORGE III, Ch. CXLII.

GEORGE

GEORGE III, Chapter CXLII, paſſed on the 20th day of July, 1797: " Whereas certain regulations for the better adminiſtra- " tion of juſtice among the native inhabitants and others, " being within the provinces of Bengal, Bahar, and Oriſſa, have " been from time to time framed by the Governor General in " Council in Bengal; and among other regulations it has been " eſtabliſhed and declared, as eſſential to the future proſperity " of the Britiſh territories in Bengal, that all regulations paſſed " by Government, affecting the rights, properties, or perſons " of the ſubjects, ſhould be formed into a regular code; and " printed, with tranſlations in the country languages; and that " the grounds of every regulation be prefixed to it; and " that the courts of juſtice within the provinces be bound " to regulate their deciſions by the rules and ordinan- " ces which ſuch regulations may contain; whereby the " native inhabitants may be made acquainted with the pri- " vileges and immunities granted to them by the Britiſh " Government; and the mode of obtaining ſpeedy redreſs " for any infringement of the ſame: and whereas it is eſſen- " tial that ſo wiſe and ſalutary a proviſion ſhould be ſtrictly " obſerved; and that it ſhould not be in the power of the " Governor General in Council to neglect or to diſpenſe " with the ſame; be it therefore enacted, that all regulations " which ſhall be iſſued and framed by the Governor Gene- " ral in Council at Fort William in Bengal, affecting the " rights, perſons, or property of the natives, or of any other " individuals who may be amenable to the provincial courts " of juſtice, ſhall be regiſtered in the judicial department, " and formed into a regular code, and printed, with tranſla- " tions in the country languages, and that the grounds of " each regulation ſhall be preſixed to it; and all the pro- " vincial courts of judicature ſhall be, and they are here- " by directed to be, bound by, and to regulate their deciſi- " ons by, ſuch rules and ordinances as ſhall be contained " in the ſaid regulations; and the ſaid Governor General in " Council ſhall annually tranſmit to the Court of Directors

37 GEORGE III, Chapter CXLII, §.

" of

" of the Eaſt India Company, ten copies of ſuch regu-
" lations as may be paſſed in each year; and the ſame num-
" ber to the Board of Commiſſioners for the affairs of
" India."

The tenor of the above ſection adopted by the legiſlature from Regulation XLI, 1793.

THE tenor, and for the moſt part, the terms, of the above ſection, are adopted from Regulation XLI, 1793, intitled " A regulation for forming into a regular code all regulations " that may be enacted for the internal government of the " Britiſh territories in Bengal;" the ſubſtance of which is thus incorporated with the laws of the Britiſh empire; and ſupported upon this firm baſis, it may be deemed the corner ſtone of the ſyſtem of regulation and polity, for the internal government of theſe provinces, which was inſtituted, in the year 1793, by the MARQUESS CORNWALLIS. It may alſo be juſtly conſidered to have eſtabliſhed a conſtitution for the native inhabitants of this dependent ſubordinate kingdom*, the moſt beneficial for them, and for the ſovereign ſtate, which the ſituation and circumſtances of both will admit. It is impracticable to extend to India, held as a foreign dependency, the laws and conſtitution of Great Britain. Nor would ſuch laws and conſtitution, (the inеſtimable privilege, and deareſt right of thoſe who have the happineſs to be born and educated under them,) be ſuitable or acceptable, if they could be ſo extended, to a people whoſe " religion, laws, cuſtoms and manners (to uſe the words of an intelligent, though anonymous writer) † " have fixed ſuch inſuperable barriers to all aſſimilation, that " they can never be overcome, if ſo wild a project ſhould ever

The ſubſtance of which is thus incorporated with the laws of the Britiſh empire. And is the corner ſtone of the ſyſtem found d by Marqueſs Cornwallis in 1793.

Conſtitution thereby eſtabliſhed for the native inhabitants of this dependent kingdom.

* As Ireland was before the late Union: See BLACKSTONE's fourth ſection, on the countries ſubject to the laws of England. His remarks on the ſtate of Ireland, before its Parliament was united with that of Great Britain; on the laws enacted by the ſuperior State, which, being generally calculated for its own internal government, do not extend to its diſtant dependent territories, bearing no part in the legiſlature, except when the ſovereign legiſlative power ſees it neceſſary to extend its care to any of its ſubordinate dominions; and on the nature and conſtitution of a dependent State, held under what is uſually called the right of conqueſt, but in reaſon, and civil policy, under an expreſs, or tacit, compact, to treat the conquered, on their acknowledgement of the victor's authority, as ſubjects; are ſo pertinent and applicable to the Britiſh territories in India, conſidered as a dependency on the Crown of Great Britain; that they well merit attention; and would have been inſerted in this place, if they had not appeared too long for a note.

† The Author of " a ſhort review of the Britiſh Government in India, and of the ſtate of " the Country before the Company acquired the grant of the Dewany," publiſhed in 1790.

" be

" be attempted." It may however be truly ſaid, that the Acts of Parliament now in force, and the exiſting codes of regulations, enacted by the governments of Fort William, Fort St. George, and Bombay, (which preſerve to Hindoos and Mahomedans their reſpective laws, in ſuits regarding ſucceſſion, inheritance, marriage, and caſt, and all religious uſages and inſtitutions;) with the proviſion made for ſuch further laws and regulations as circumſtances and experience may, from time to time, ſhew to be required, have realized and eſtabliſhed the ſyſtem, which, in the well known work, intitled " Plans for the government and trade of Great " Britain in the Eaſt Indies," is ſtated to combine the " prevailing opinions reſpecting the future government of India, " and regulation of trade to the Eaſt Indies," viz. " That a " ſyſtem ſhould be formed, which ſhall preſerve, as much " as poſſibly can be done, their inſtitutions and laws to the " natives of Hindooſtan; and attemper them with the mild " ſpirit of the Britiſh government. That this ſyſtem ſhould " veſt in the ſtate its juſt rights of ſovereignty over our territorial poſſeſſions in India, of ſuperintending and controlling all matters of a financial, civil, and military nature. " And that it ſhould preſerve the trade to the Company in " all its branches; but give to the executive government a " proper authority to regulate their proceedings; bound by " a poſitive reſponſibility to Parliament.

By Regulation XLI, 1793, before referred to, (which has been ſince extended to the province of Benares* by Section IV, Regulation I, 1795, and re-enacted for the ceded provin- Proviſions of Regulation XLI, 1793.

* The ſovereignty of this province was ceded to the Company by the fifth article of the treaty with the Vizeer, Asuf-oo-Doulah, dated 21ſt May 1775. But the ſyſtem of internal adminiſtration, adopted in Bengal, Bahar, and Oriſſa, in 1793, was not extended to Benares till 1795, under an agreement with the Rajah, Mahipna'ra'in, bearing date the 27th October 1794.

ces

ces by Regulation I, 1803*), it is enacted, with other ſubſidiary proviſions, that "every rule or order that may be paſſed by the Governor General in Council, regarding the adminiſtration of juſtice, the impoſition, or levying of taxes, or of duties on commerce, the collection of the public revenue aſſeſſed upon the lands, the rights and tenures of the proprietors and cultivators of the ſoil, the proviſion of the Company's inveſtment, the manufacture of ſalt, or opium, and generally all regulations affecting, in any reſpect, the rights, perſons, or property, of the natives, or any individuals who may be amenable to the provincial courts of judicature, ſhall be recorded in the judicial department; and there framed into a regulation, and printed and publiſhed;" in a preſcribed form, with tranſlations in the current languages of the country. That the regulations paſſed annually ſhall be numbered; and divided into ſections, and clauſes; ſo as to conſtitute a regular code. That every regulation ſhall have a title expreſſing the ſubject of it; and a preamble ſtating the reaſons for the enaction of it. That if any regulation ſhall repeal or modify a former regulation, the reaſons for ſuch repeal or modification, ſhall be detailed in the preamble. And that "the civil and criminal courts of juſtice ſhall be

* By the "ceded provinces," are meant the diſtricts of Moradabad, Barely, Itawa, Furrukhabad, Kanhpoor, Ilahabad, and Gorukhpoor, which were ceded to the Eaſt India Company by the Nuwab Vizeer, on the 10th day of November 1801; the territory in Boondelkhund ceded by the Peſhwa, on the 16th December 1803; and the diſtricts of Paneeput, Suharunpoor, Alygurh, and Agra, ceded by DOU'LUT RA'O' SE'NDHEEA, on the 30th December 1803. The latter are alſo denominated the "Conquered provinces in the Doab, and on the right "bank of the river Jumna." The regulations for the adminiſtration of juſtice in criminal caſes, which had been enacted conformably to the rules preſcribed in Regulation I, 1803, for the provinces ceded by the Nuwab Vizeer, have, by Regulation IX, 1804, been extended to the territories ceded by the Peſhwa and DOU'LUT RA'O' SE'NDHEEA; and it has been determined by Government to extend the remaining regulations, enacted for the provinces ceded by the Nuwab Vizeer, to thoſe ceded by the Peſhwa and DOU'LUT RA'O' SE'NDHEEA, with ſuch local modifications as may be found neceſſary. It has not therefore appeared requiſite to diſtinguiſh the three deſcriptions of ceded provinces in this Analyſis; except to notice any ſpecial proviſions for them reſpectively. For a ſimilar reaſon, no diſtinct mention is made of the proviſce of Cuttac, which ſurrendered to the Britiſh Arms on the 14th October 1803; and to which the regulations for criminal juſtice and police, enacted for Bengal, Bahar, and Oriſſa, in the manner preſcribed by Regulation XLI, 1793, have been extended, by Regulation IV, 1804; except when it is neceſſary, to ſpecify any local proviſion for that province.

guided,

" guided in their proceedings and deciſions by the regulati-
" ons framed and tranſmitted to them as directed, and by no
" other." It is further provided, that in the Engliſh regula-
tions, as well as in the tranſlations of them into the languages
of the country, the ſame deſignations and terms ſhall be ap-
plied to the ſame deſcriptions of perſons and things; in order
that rights, property, tenures, privileges, deeds, courts, pro-
ceſſes, offices, officers, and generally all perſons and things,
may be uniformly deſcribed throughout the code. That the
tranſlator of the regulations, whenever he ſhall have occaſion
to inſert the deſignation or name of any perſon, or thing, that
he may have reaſon to believe will not be intelligible to the
natives in general, and which may not have been uſed, and ex-
plained, in the tranſlates of any former regulation, ſhall, in
the firſt paſſage in which ſuch word or term may occur, ſub-
join an explanation of it; that, upon its recurring, no doubt
may be entertained as to its true meaning and import. That
he ſhall alſo tranſlate the regulations into plain and eaſy lan-
guage; and, as far as may be conſiſtent with a preſervation of
the true meaning and ſpirit of them, ſhall adopt the idiom
of the native languages; inſtead of giving a cloſe and verbal
tranſlation, which muſt neceſſarily be obſcure, and often un-
intelligible. That " one part of a regulation is to be conſtru-
" ed by another, ſo that the whole may ſtand." That " if any
" regulation ſhall be paſſed, differing from a former regula-
" tion, either wholly or partially, the new regulation is to
" be conſidered a virtual appeal of the old one, as far as it
" may differ from the latter, provided that the new regu-
" lation be couched in negative terms; or by its matter ne-
" ceſſarily imply a negative." And, laſtly, that " if a regu-
" lation, which reſcinds another regulation, is itſelf afterwards
" reſcinded, the original regulation is to be conſidered as revi-
" ved, without any formal declaration to that purpoſe."

The principles, on which this fundamental regulation was grounded,

Principles of the above regu-

lation, declared in its preamble.

grounded, and the objects intended by it, muſt be obvious, after what has been ſtated, of the want of a general and publiſhed ſyſtem of municipal law, at the time when this proviſion for it was made. In the preamble, it is declared "eſſential to the future proſperity of the Britiſh territories "in Bengal, that all regulations, which may be paſſed by go- "vernment, affecting in any reſpect the rights, perſons, or "property of their ſubjects, ſhould be formed into a regular "code; and printed with tranſlations in the country languages: "that the grounds, on which each regulation may be enacted, "ſhould be prefixed to it; and that the courts of juſtice ſhould "be bound to regulate their deciſions by the rules and ordi- "nances which thoſe regulations may contain." It is added that "a code of regulations framed upon the above principles, "will enable individuals to render themſelves acquainted with "the laws, upon which the ſecurity of the many inеſtimable "privileges and immunities, granted to them by the Britiſh "government, depends; and the mode of obtaining ſpeedy "redreſs againſt every infringement of them; the courts of "juſtice will be able to apply the regulations according to "their true intent and import; future adminiſtrations will "have the means of judging how far regulations have been "productive of the deſired effect; and, when neceſſary, to "modify or alter them, as from experience may be found "adviſable; new regulations will not be made, nor thoſe "which may exiſt be repealed, without due deliberation; "and the cauſes of the future decline or proſperity of theſe "provinces will always be traceable in the code to their "ſource." It may further be obſerved, that by the enaction of this regulation, and by the inſtitution of civil and criminal courts of juſtice, to be guided by the regulations framed and publiſhed in conformity with it, *and by no other*, an object, which in all countries has been held of the higheſt importance, for the protection of the perſon and property of the ſubject, that of adminiſtering juſtice by the means of judicial officers,

Separation of judicial, from legiſlative and executive authorities, effected by this regulation, and by inſtitution of courts of juſtice, on the principles ſtated.

independent

independent of the legiſlative and executive authorities of the ſtate, has been attained and ſecured for this country, in as great a degree as the circumſtances of it admit. Conſtituted as the courts of juſtice now are; and bound as the judges are by oath, "to adminiſter juſtice conformably to the regulations, that "have been, or may be, paſſed by the Governor General in "Council, to the beſt of their ability, knowledge, and judg-"ment, without fear, favor, promiſe, or hope of reward;" reſtricted alſo, as they are by oath, from being concerned, directly or indirectly, in any commercial tranſactions; as well as from deriving any "emoluments or advantages from their "ſtations, excepting ſuch as the orders of government do or "may, authorize them to receive;" and liberal as their fixed and authorized allowances now are, ſuch as to remove every ſhadow of pretence for deviating, in the ſlighteſt degree, from the ſacred obligations impoſed upon them by their oaths, by the laws and regulations, by the public truſts committed to them, by their honor and character, and by every principle of religion and morality; it may be pronounced with confidence, that effectual and ſufficient proviſion (under the vigilant care of government to ſelect proper perſons for adminiſtering the laws, and to make public examples of any who may dare to violate them;) has been made, by the ſyſtem now eſtabliſhed, to extend to the numerous and induſtrious Inhabitants of this remote, but valuable portion of the Britiſh Empire, the important benefit, enjoyed by the European ſubjects of the ſame ſtate; a pure, and impartial adminiſtration of juſtice: or as emphatically expreſſed in the recent addreſs of Marqueſs WELLESLEY to the ſtudents of the College of Fort William; "that primary object of all good government, the greateſt "bleſſing attainable by any people, an impartial adminiſtration "of juſt law."

Proviſions for the propoſition of new regulations to Government.

That the Governor General in Council may be apprized of ſuch general, or local, regulations, as the magiſtrates, or any of

West Bengal Government Library

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of the civil or criminal courts of judicature, may deem it adviſable to propoſe, reſpecting matters coming within their cognizance; The judges of the whole of thoſe courts, as well as the magiſtrates of the ſeveral zillahs (diſtricts) and cities, are empowered by Regulation XX, 1793, (extended to Benares by Regulation XXXIX, 1795, and re-enacted for the ceded provinces by Regulation IX, 1803,) to propoſe regulations regarding any matters coming within their cognizance; under preſcribed rules for drawing out the ſame in the form directed by the regulation before noticed; and for ſubmitting them, when ſo prepared, through the proper official channel, for the ſentiments of the ſuperior courts, in the firſt inſtance; and ultimately for the conſideration of the Governor General in Council; to whom is reſerved a diſcretion to reject or adopt any regulation that may be ſubmitted to him; or to paſs ſuch other regulation as may appear to him proper. The ſame power of propoſing any new regulation, regarding matters within the cognizance of the officers of revenue, is veſted in the Board of Revenue and the collectors of diſtricts, by Section XXXI, Regulation VII, 1799, (extended to Benares by Section XXVIII, Regulation V, 1800; and to the ceded provinces by the laſt Section of Regulation XXVI, 1803;) and though not expreſsly provided for, the ſame means of bringing forward any new regulations, which local knowledge and experience may ſuggeſt, are underſtood to be open to every other department of the public ſervice. By Regulation X, 1796, (re-enacted for the ceded provinces by Regulation XXII, 1803,) it is further provided that in all "caſes of difference of opinion on the meaning and conſtruction of the regulations" between the zillah and city judges and magiſtrates, and the judges of the provincial courts of appeal and circuit, a reference, if deſired by the ſubordinate judge and magiſtrate, after ſtating his objections to the provincial court, and receiving their precept in reply thereto, ſhall (without however ſuſpending the execution of

And for ſecuring an uniform conſtruction of the exiſting regulations.

ſuch

ſuch precept) be made to the ſuperior civil court, of ſudder dewanny adawlut; or to the ſuperior criminal court, of nizamut adawlut. Copies of the precepts iſſued, and returns made, with ſuch other papers as may be neceſſary for information of the circumſtances of the caſe, are directed to be tranſmitted, whenever ſuch references may occur, to the ſudder dewanny adawlut or nizamut adawlut: and the determination of thoſe courts, "who are empowered to preſcribe the forms "and conduct to be obſerved by the provincial, zillah, and "city courts of dewanny adawlut, the courts of circuit, and "the zillah and city magiſtrates, in all caſes provided for by "the regulations, agreeably to their conſtruction thereof, is "to be held final and concluſive. Should any doubt occur "to the ſudder dewanny adawlut, or the nizamut adawlut, "with reſpect to the meaning of any part of the regulations, "or ſhould it appear to them, on occaſion of any reference "from the provincial, zillah, or city courts, the courts of cir-"cuit, or the zillah or city magiſtrates, that the regulations "do not ſufficiently provide for the caſe ſubmitted to their "deciſion, they are, in the former caſe, to report the circum-"ſtances of it to the Governor General in Council, that a new "regulation may be framed in explanation of ſuch doubt; "and in the latter caſe, are to propoſe a new regulation in "the manner preſcribed by Regulation XX, 1793."

Concluding obſervation on the legiſlative proviſions, recited in this ſection.

It would be ſuperfluous to offer any further comment, on the wiſdom, policy, and utility, of the general legiſlative proviſions, which have been thus enacted; and which conſtitute the ground-work of the exiſting ſyſtem of internal government in theſe provinces; founded, as already obſerved, upon the ſtill broader baſis of Britiſh law; and it may be ſaid, cemented with the ſpirit of the Britiſh conſtitution. It appeared proper, in this preliminary ſection, to ſtate conciſely, the gradual eſtabliſhment of ſovereign authority in the Company's territorial poſſeſſions under this preſidency; the relative ſituation

tion of theſe poſſeſſions, as forming a conſtituent part, and dependent kingdom, of the Britiſh empire, governed, for political and commercial purpoſes, through the managers, and local agents, of a chartered corporation, under the control of the executive and legiſlative powers of the ſtate; and the declared ſanction of the legiſlature, which has given the force and authority of law, within the juriſdiction of the Governor General in Council at Fort William, to the regulations that form the ſubject of this analyſis. It will be ſufficient to add the following appoſite remark of an eminent author on the law of nature and nations.* "There is but one way of forming a civil code, either conſiſtent with common ſenſe, or that has ever been practiſed in any country; namely, that of gradually building up the law, in proportion as the facts ariſe which it is to regulate." The regulations which have, from time to time, been enacted by the Britiſh Government in India, illuſtrate the truth of this remark; which alſo ſatisfactorily explains, why no code of laws could, at once, be rendered ſo complete, and perfect, as not to require addition or alteration.

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* Sir James Mackintosh, in his diſcourſe on the ſtudy of the law of nature and nations, introductory to a courſe of lectures on that ſcience. From the extenſive knowledge diſplayed in this diſcourſe, as well as from its claſſical language, and the known abilities of the writer, it is much to be regretted that his courſe of lectures, which, it cannot be doubted, exemplified ample grounds of the conviction expreſſed by him, "that public lectures, which have been uſed in moſt ages and countries, to teach the elements of almoſt every part of learning, were the moſt convenient mode in which theſe elements could be taught; that they were the beſt adapted for the important purpoſes of awakening the attention of the ſtudent; of abridging his labour; of guiding his enquires; of relieving the tediouſneſs of private ſtudy; and of impreſſing on his recollection the principles of ſcience;" have not been publiſhed for general information and inſtruction.

SECTION II.

COURTS OF CIVIL JUSTICE.

Obligation upon the ruling power, in every ſtate, to adminiſter juſtice.

AN eminent writer upon political œconomy * has ſtated the firſt duty of the ſovereign, in every civilized ſtate, to be "that of protecting the ſociety from the violence and in-"vaſion of other independent ſocieties;" and his ſecond duty to be "that of protecting, as far as poſſible, every member of "the ſociety from the injuſtice or oppreſſion of every other "member of it; or the duty of eſtabliſhing an exact admini-"ſtration of juſtice." The former of theſe obligations is foreign to the ſubject and deſign of this analyſis. Of the latter, ſuch part as relates to the duty of enacting and publiſhing an equitable ſyſtem of law, has been ſet forth, imperfectly, but, it is hoped, ſufficiently for the object intended, in the preceding ſection. The purpoſe of this will be, to conſider the ſecond branch of the public obligation ſtated, that of providing for the due execution of the laws; particularly of thoſe which relate to the redreſs of private wrongs, or civil juſtice; the conſideration of ſuch as regard the puniſhment and prevention of public wrongs and offences, or criminal juſtice and police, being reſerved for the ſucceeding ſection.

Civil juſtice the ſubject of the preſent ſection.

The due adminiſtration of a juſt ſyſtem of law, as much the intereſt, as it is the duty, of the governing power.

IN every country, and under every form of government, an efficient adminiſtration of juſtice, to protect from violence, and ſecure from injury, the natural and civil rights of the ſubject, is manifeſtly the duty, as it is alſo the evident intereſt, of the governing power. "This obligation flows from the end,

* A. SMITH, in the fifth Book of his admirable "inquiry into the nature and cauſes of the "wealth of nations."

and

and very contract of civil ſociety*." Protection and allegiance are reciprocal†. And whether the Britiſh poſſeſſions in India were acquired by grant, ceſſion, or conqueſt, the natives are equally intitled, in return for their obedience and contributions, to the common right of all ſubjects, ſecurity of perſon and property; as far as the ſame can be maintained by a ſyſtem of good laws well adminiſtered. Such an adminiſtration muſt, at the ſame time, promote the proſperity of the country; the advantages to be derived from it by the Eaſt India Company; and the permanent intereſts and policy of the Britiſh Nation. In proportion as the inhabitants are ſecured againſt wrong to their perſons and property, their induſtry will be exerted in the extenſion of agriculture, manufactures, and commerce. As theſe are extended, the reſources of the country muſt be increaſed. And if the people experience the benefits of good government, in the free exerciſe of their religion; in the protection of their perſons from injury; and in the ſafe enjoyment of their property; they muſt be better ſatisfied with the government under which they enjoy theſe ſubſtantial benefits; than they could be under a ſyſtem of perſecution, oppreſſion, and injuſtice; or under any ſyſtem leſs calculated to produce their eaſe and happineſs.

Influence of above principles on the Britiſh adminiſtration in India.

THESE obvious truths, and juſt principles, appear to have influenced, in a greater or leſs degree, the Britiſh adminiſtration in India, from the time of its firſt operative interference in the government of the country; and there can be no ground of doubt, that juſtice has been more impartially adminiſtered in the civil courts eſtabliſhed ſince the year 1772, when it was reſolved (as already noticed) to execute the functions incident to the dewany grant of 1765, through

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* VATTEL, Book I. Cap. XIII.

† BLACKSTONE, Book I. Cap. X. "Allegiance is the tie, or *ligamen*, which binds the ſubject to the King, in return for that protection, which the King affords the ſubject."

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the agency of the Company's ſervants; than in the courts before eſtabliſhed by the Mahomedan government, of which a Committee of the Houſe of Commons, who made the ſtate of the former judicatures in Bengal a ſpecial object of their enquiry, reported in the year 1773, that "ſo far as they were "able to judge, from all the information laid before them, the "ſubjects of the Moghul empire in that province derived "little protection or ſecurity from any of theſe courts; and "that, in general, though forms of judicature were eſtabliſhed, "and preſerved, the deſpotic principles of the government "rendered them the inſtruments of power, rather than of "juſtice; not only unavailing to protect the people; but "often the means of the moſt grievous oppreſſions under the "cloak of the judicial character." The committee further ſtated it to be "the general ſenſe of all the accounts they had "received reſpecting theſe courts; that the adminiſtration of "juſtice, during the vigour of the ancient conſtitution, was "liable to great abuſe and oppreſſion; that the judges gene-"rally lay under the influence of intereſt; and often under "that of corruption; and that the interpoſition of govern-"ment, from motives of favor or diſpleaſure, was another fre-"quent cauſe of the perverſion of juſtice *." This authoritative ſtatement is corroborated by every well informed writer on the Mahomedan government of Bengal, after it ceaſed to be directed by the regular control, and vice royal appointment, of the Emperor; from SCRAFTON, who, in his firſt letter †, ſtates, "the government of the Moors borders ſo near on "anarchy, you would wonder how it keeps together;" to Governor VERELST, who, in his inſtructions to the ſupervi-ſors (appointed in 1770) obſerves: "It is difficult to deter-"mine whether the original cuſtoms, or the degenerate man-"ners, of the Muſſulmen, have moſt contributed to confound "the principles of right and wrong in theſe provinces. Cer-

Report of a Committee of the Houſe of Commons on the former judicatures in Bengal.

Coroborated by writers on the Mahomedan government of Bengal, after it became independent of imperial control.

* Vide ſixth report of the committe of ſecrecy, 1773.

† On the government of Hindooſtan, publiſhed in 1763.

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" tain it is that almoſt every deciſion of theirs is a corrupt bar-
" gain with the higheſt bidders.*"

Plan of the committee of circuit, for the adminiſtration of juſtice, adopted in 1772.

IMMEDIATELY after the receipt of orders from the Honorable Court of Directors, to enter upon the duties of the dewanny office, a committee was appointed, conſiſting of the Governor Mr. HASTINGS, and four Members of the Council; who, on the 15th Auguſt 1772, propoſed a plan for the adminiſtration of juſtice, which, on the 21ſt of the ſame month, was adopted by the government. Under this plan, which contains ſome original proviſions yet preſerved in our judicial code, moſuſſil dewanny adawluts, or provincial courts of civil juſtice, under the ſuperintendence of the collectors of the revenue, were eſtabliſhed in each diſtrict. " All diſputes con-
" cerning property, real or perſonal, all cauſes of inheritance,
" marriage, and caſt, all claims of debt, diſputed accounts,
" contracts, and demands of rent," were declared cognizable by theſe courts; excepting the right of ſucceſſion to zemindaries and talookdaries; the deciſion of which was reſerved to the Preſident and Council. A court of ſudder dewanny adawlut, or ſuperior civil court, was at the ſame time inſtituted at the preſidency, under the ſuperintendence of three or more Members of the Council, to hear appeals from the provincial courts, in cauſes exceeding five hundred rupees. It was declared that, " as nothing is more conducive to the proſ-
" perity of any country, than a free and eaſy acceſs to juſtice
" and redreſs, the collectors ſhall at all times be ready to
" receive the petitions of the injured." The cuſtom of levying *chout*, *duſſuttra*, *punchuttra*, or any other fee or commiſſion, on the amount of money recovered, or *etlak* on the deciſion of

* That the ſame favorable compariſon may be made, between the ſyſtem of internal government now eſtabliſhed in the provinces recently ceded by the Nuwab Vizeer, and that which ſubſiſted before the ceſſion in 1801; is abundantly ſhewn by an official report, dated the 10th February 1805, from Mr. HENRY STRACHEY, one of the judges of the court of appeal and circuit for thoſe provinces; who remarks—" It is ſcarcely poſſible for an unprejudiced mind to doubt the ſuperiority of our Government to the native Governments. To do ſo, is to compare anarchy, oppreſſion, and wretchedneſs, with juſtice, moderation, peace and ſecurity."

cauſes,

cauſes, as well as all heavy arbitrary fines, "was for ever abo-liſhed." And, beſides proviſions for local inveſtigations regarding diſputed lands, boundaries, &c. and for the ſettlement of accounts, partnerſhips, and other matters, by arbitration, when the parties might agree thereto; it was provided "that in all "ſuits regarding inheritance, marriage, caſt, and other re-"ligious uſages or inſtitutions, the laws of the Koran with "reſpect to Mahomedans, and thoſe of the Shaſter with reſ-"pect to Gentoos, ſhall be invariably adhered to. On all "ſuch occaſions the Moulavies or Brahmins ſhall reſpec-"tively attend to expound the law, and they ſhall ſign the "report, and aſſiſt in paſſing the decree."

Alteration in the conſtitution of the civil courts, on the appointment of provincial councils, in 1774.

In 1774, an alteration took place in the conſtitution of the moſuſſil dewanny adawluts, by the recal of the collectors, and appointment of provincial councils for the diviſions of Calcutta, Burdwan, Dacca, Moorſhedabad, Dinagepore, and Patna. The adminiſtration of civil juſtice was veſted in the Council at large; but exerciſed by one of the members in rotation. This plan continued in force till the 28th March 1780, when the Governor General and Council reſolved, that, for the more effectual and regular adminiſtration of juſtice, diſtinct courts of dewanny adawlut ſhould be eſtabliſhed in the ſix diviſions abovementioned; to be independent of the provincial councils; and to take cognizance of all claims of inheritance to zemindaries, talookdaries, or other real property; or mercantile diſputes; all matters of perſonal property (with the exceptions ſubſequently noticed) and all diſputes about the limits of landed property within the town of Calcutta; and Punchawungong, or the fifty-five villages ſurrounding it. But the provincial councils were to try and decide, as heretofore, all cauſes having relation to the public revenue, as well as all demands of landholders and farmers on their under-renters, or others, for arrears of rent; and all complaints from ryots, and tenants of every deſcrip-

Further alteration, by the eſtabliſhment of diſtinct courts, in 1780.

tion,

tion, for irregular or undue exactions of rent or revenue. The provincial councils were further to try and decide all diſputes relative to boundaries; except within the town of Calcutta and Punchawungong (which were excepted as, from their number and intricacy, being likely to occupy too much of their time) and alſo all claims for money lent to zemindars, talookdars, and chowdries, for the payment of the revenue. The further proviſions for the adminiſtration of juſtice, made at this period, are detailed in a plan, recorded on the proceedings of the Governor General and Council, under date the 28th March 1780; and printed in the Appendix to the Firſt Report from the Select Committee of the Houſe of Commons, appointed in 1781.

New conſtitution of ſudder dewanny adawlut, in 1780.

THE avocations of the Governor General and Council having prevented their ſitting in the court of ſudder dewanny adawlut, a ſeparate judge (Sir E. IMPEY) was, on the 18th October 1780, appointed to the charge and ſuperintendency of that court. And, on the 3d November following, thirteen articles of regulations, prepared by the judge, and approved by the government, were paſſed for the guidance of the civil courts, ſuperior and inferior; which were afterwards incorporated, with additions and amendments, in a reviſed code, comprizing ninety five articles, of "Regulations for "the adminiſtration of juſtice in the courts of moſuſſil de- "wanny adawlut, and in the ſudder dewanny adawlut, "paſſed in Council the 5th of July 1781;" the declared objects of which were "the explaining ſuch rules, orders and "regulations, as may be ambiguous; and revoking ſuch as may "be repugnant or obſolete; to the end that one con- "ſiſtent code be framed therefrom; and one general table "of fees eſtabliſhed in and throughout the ſaid courts of "moſuſſil dewanny adawlut; by which a general confor- "mity may be maintained in the proceedings, practice and "deciſions of the ſeveral courts; and that the inhabitants

Regulations paſſed on the 3d November 1780.

Incorporated, in a reviſed code, paſſed on the 5th July 1781.

Objects of this code.

"of

" of theſe countries may not only know to what courts, and " on what occaſions, they may apply for juſtice; but, ſee- " ing the rules, ordinances and regulations, to which the " judges are by oath bound invariably to adhere, they may " have confidence in the ſaid courts; and may be apprized " on what occaſions it may be adviſable to appeal from the " courts of moſuſſil dewanny adawlut to the court of " ſudder dewanny adawlut; and knowing the utmoſt of the " coſts which may be incurred in their ſuits, may not, from " apprehenſion of being involved in exorbitant and unfore- " ſeen expences, or of being ſubjected to frauds, or extortion of " the officers of the court, be deterred from proſecuting their " juſt claims."

Jurisdiction of the civil courts, eſtabliſhed under theſe regulations.

UNDER theſe regulations (which were printed with tranſlations, and which conſtitute a principal foundation of the rules now in force, relative to the adminiſtration of civil juſtice, though including a material deviation from the preſent ſyſtem, with reſpect to the cognizance of rent and revenue cauſes, as will be more fully ſtated) all ſuits concerning the inheritance or ſucceſſion to zemindaries, talookdaries or other landed property, or concerning any right, title, or claim of poſſeſſion thereto, or the bounds and limits thereof, and concerning debts, accounts, contracts, or property of any nature whatſoever, real or perſonal, (excluſive of demands for arrears of rent, or complaints for exactions of rent, and all cauſes relative to the public revenue, the cognizance of which was left to the collectors, who had been ſubſtituted for the provincial councils) were made cognizable, as heretofore, by diſtinct courts of moſuſſil dewanny adawlut; which had been augmented to the number of eighteen, on the 6th April preceding, in conſequence of experienced inconvenience from the too extenſive juriſdiction of the ſix before inſtituted; and the judges of which were unconnected with the revenue department; except in the diſtricts of Chittra, Bhagulpore,

gulpore, Iſlamabad and Rungpore; where, for local reaſons, the offices of judge and collector were veſted in the ſame perſon; but with a proviſion that the judicial authority ſhould be conſidered altogether ſeparate from that of the collector; and that in the former capacity the judge ſhould be wholly independent of the board of revenue; ſubject only to the authority of the Governor General in Council; and of the judge of the ſudder dewanny adawlut. The ſuperintendence of this court was reaſſumed by the Governor General and Council, on the 15th November 1782, in purſuance of inſtructions from the Honorable Court of Directors; and by the Statute 21, GEORGE III, Cap. LXX, it was declared, that "Whereas the Governor General and Council, or ſome "committee thereof, or appointed thereby, do determine on "appeals and references from the country or provincial "courts in civil cauſes; be it further enacted, that the ſaid "court ſhall and lawfully may hold all ſuch pleas and ap-"peals, in the manner and with ſuch powers as it hitherto "hath held the ſame, and ſhall be deemed in law a court "of record; and the judgments therein given ſhall be final "and concluſive; except upon appeal to His Majeſty, in "civil ſuits only, the value of which ſhall be five thouſand "pounds and upwards."

Superintendence of the ſudder dewanny adawlut reaſſumed by the Governor General and Council, in 1782.

And the powers of this court, declared to be a legal court of record, confirmed by the Statute 21, George III, Cap. LXX, with an appeal to the King in Council, in ſuits for 5001. and upwards.

IN the year 1787, in conſequence of further inſtructions from the Court of Directors, it was reſolved that, with an exception to the three courts eſtabliſhed in the cities of Moorſhedabad, Patna, and Dacca, (which were to continue independent of any collectorſhip for the deciſion of cauſes of a civil nature originating within the limits of theſe cities,) the office of judge of the ſeveral moſuſſil courts, ſhould be held by the perſon who had, or ſhould hereafter have, the charge of the revenue. A reviſed code of judicial regulations, adapted to this change of ſyſtem, and dated the 27th June 1787, was at the ſame time printed and publiſhed, with tranſlations, in ninety

Change of ſyſtem in 1787; by uniting the offices of judge and collector in the ſame perſon; except in the three cities.

Reviſed code of regulations adapted to this change.

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one articles; the fourteenth of which declared the matters cognizable in the mofuſſil adawluts to be, all diſputes concerning property, real or perſonal; all cauſes of inheritance, marriage or caſt; all claims to zemindaries, talookdaries, and other lands; all matters relating to debts, accounts, contracts, partnerſhips, and duties; and in general all "ſubjects of litigation; "being of a civil nature, and not concerning the revenues." But, by the 19th ſection, theſe courts were not to entertain "any ſuit or cauſe for any matter or thing directly "or indirectly relating to the public revenue; or concerning "any demand of government on zemindars, talookdars, "chowdries, or other landholders, farmers, muttahids, wada-"dars, ſecurities, aumils, tuſſildars, etmamdars, or others, em-"ployed in the collections, or, in any wiſe reſponſible for the "revenues; or any demands of zemindars, talookdars, chow-"dries, or other landholders, farmers, muttahids, wadadars, "ſecurities, aumils, tuſſildars, etmamdars, or other perſons "employed in the collections, or their under farmers, malza-"mins, inferior landholders, and collectors, or others, from "whom rents or revenues have been immediately due to them. "Nor any demands for rents or revenues on perſons employ-"ed in the collection of them, officially or hereditarily, in the "different gradations downwards, from government to the "ryots, or immediate occupants of the ſoil; nor again, in the "ſame manner, of any complaints of ryots and perſons, of any "of the abovementioned denominations, againſt the perſons "to whom they pay revenues in the different gradations up-"wards, for irregular or undue exactions."

THE whole of the cauſes, thus excepted from the juriſdiction of the courts of dewanny adawlut, were made cognizable by the collectors, under a ſeparate code of revenue regulations (paſſed on the 8th June 1787,) by the firſt article of which it was provided, "that the ſeveral branches of the public duty, "now veſted in the collector, ſhall not be blended in the exe-"cution;

Cauſes relating to the land rents or public revenue, made cognizable by the collectors, under a ſeparate code of regulations, and appealable to the board of revenue and Governor General and Council.

" cution; but each part ſhall be diſcharged by him in the " capacity of collector, judge, or magiſtrate, according to the " department to which it belongs, and be recorded in the pro- " ceedings of that department only, diſtinct from others." It was further provided, that the board of revenue ſhould be authorized to receive appeals in matters of revenue, from the deciſions of the collectors; if preferred within one month; and an ultimate appeal was allowed from their determination, within the ſame period, to the Governor General and Council.

Reaſons aſſigned for re-inveſting the collectors with the ſuperintendence of the civil courts;

THE reaſons aſſigned for reinveſting the collectors with the ſuperintendence of the courts of moſuſſil d wanny adawlut, (a ſyſtem which had been diſcontinued in 1780, " for the " more regular adminiſtration of juſtice in the country civil " courts of theſe provinces;") were " the greater ſimplicity, " energy, juſtice, and œconomy, expected to be the reſult of " the meaſure." The following objections, which candour requires to be noticed, had alſo been ſtated, againſt the ſyſtem eſtabliſhed in 1780 and 1781, by one of the moſt experienced, ableſt, and beſt informed of the Company's ſervants*. " People " accuſtomed to a deſpotic authority ſhould look to one maſter. " It is impoſſible to draw a line between the revenue and judi- " cial departments in ſuch a manner as to prevent their claſhing; " and in this caſe, either the revenues muſt ſuffer, or the " adminiſtration of juſtice muſt be ſuſpended. The preſent " regulations define the objects of the two juriſdictions with " clearneſs and preciſion; yet they continually claſh in prac- " tice: complaints are ſo blended, that it is often impoſſible " to determine to which tribunal they belong; and that there " has not been more confuſion than has actually happened,

And objections ſtated againſt the former ſyſtem.

* Sir J. SHORE. In his " remarks on the mode of adminiſtering juſtice to the natives in " Bengal, and in the collection of the revenues," which have been already mentioned as delivered to Sir J. MACPHERSON in January 1782, and recorded by the latter on the Bengal revenue conſultations of 29th May 1785. It ſhould be added, as appears from Sir J. MACPHERSON's minute, recorded at the ſame time, that theſe remarks were written for his perſonal information; and were " not meant for the public eye."

" is owing to the diſcretion of thoſe who have been entruſted
" with the adminiſtration of juſtice. It may be poſſible, in
" the courſe of time, to induce the natives to pay their rents
" with regularity, and without compulſion, but this is not
" the caſe at preſent. If any force is offered, a complaint is
" made in a court of juſtice, and whether true or falſe, a
" temporary protection is given to the complainant, who is
" releaſed from the demands upon him; to realize them af-
" terwards is no eaſy matter. In all demands for revenues,
" or in ſummonſes to cauſe the attendance of parties at the
" adawluts, peons are employed, and very often the peons
" of the two tribunals meet at the houſe of the ſame man,
" where the property of his perſon is conteſted, and he is
" obliged to pay both parties."

Remarks on the reaſons and objections above ſtated.

But, admitting that a ſyſtem, veſting in the hands of one perſon the powers of judge and magiſtrate, and the authority neceſſarily entruſted to the officers employed in the collection of the public revenue, may be more ſimple, energetic, and œconomical, than a ſyſtem which divides theſe powers between diſtinct perſons and authorities; it is manifeſtly too extenſive a truſt; and if a higher degree of juſtice be rendered, in any inſtance, by an adminiſtration of the former ſyſtem, it muſt proceed from the perſonal character and qualifications of the individuals employed to adminiſter it. Theſe, for a time, might check the natural tendency of ſuch an accumulation of power to the abuſe of it; but could not be relied upon, as a fixed principle, to ſupport any permanent ſyſtem of juſtice. Admitting further, what is by no means certain, under proper proviſions, that the collector, armed with the powers of judge and magiſtrate, might experience more facility in enforcing demands of revenue; than if there were an independent court of juſtice upon the ſpot, to which the injured could reſort when his demands, or thoſe of the native officers acting under him, exceed what is juſtly

" due;

due; by what means could redreſs be obtained againſt injuſtice in ſuch demands, where the collector himſelf preſides in the only local tribunal? Complaints indeed might have been preferred, whilſt this ſyſtem prevailed, to the board of revenue, or to the Governor General and Council, at the preſidency; but the diſtance of moſt of the diſtricts from Calcutta, with the delay and loſs of time that muſt always enſue, operated to prevent ſuch recourſe, except in caſes of ſerious oppreſſion; and a dread of the various powers united in the collector's perſon muſt have been a ſtronger bar to complaint againſt him; eſpecially when every eſtate within his juriſdiction was liable to an annual increaſe of its aſſeſſment, either at his diſcretion, or upon his information. Add to this the difficulty of aſcertaining the truth of any complaint againſt a collector, when he was the only judicial officer upon the ſpot; and it muſt be obvious that if few caſes did occur of actual oppreſſion, or injuſtice, in the exerciſe of the high powers formerly veſted in the collectors of the public revenue, it muſt be aſcribed to their perſonal merits; which, as before obſerved, might for a time prevent the ill conſequences of a defective ſyſtem; but could not be urged againſt the expediency of a more certain and adequate remedy. It might be added, that ſome caſes have occurred to ſhew the neceſſity of ſupplying this defect in the former ſyſtem of revenue and juſtice. But it is not neceſſary that an abuſe of authority ſhould actually take place to evince the wiſdom of guarding againſt it. Nor was this the only objection to the union of the functions of judge and magiſtrate with thoſe of the collector. In the latter capacity his meaſures and conduct were continually open to inſpection. The monthly reports made by him of the ſtate of his collections drew the conſtant attention of the board of revenue, and of government, to his ſucceſs, or failure, in realizing the public dues; and commendation, or cenſure, was the frequent reſult; whilſt, at the ſame time, his diligence or neglect in the deciſion of

cauſes

cauſes, wherein the government had no immediate intereſt, was ſeldom brought into public notice; and when obſerved, the multiplicity of duties he had to perform might be a real plea of juſtification for any delay in the adminiſtration of juſtice. Under theſe circumſtances, it was natural and unavoidable, that the collection of the revenue, on which the collector's credit and promotion in the ſervice might depend, ſhould be conſidered his primary duty; and that his duties as judge and magiſtrate ſhould be regarded as ſubordinate. The latter might be expected to give way, or at leaſt to remain ſuſpended, whenever they interfered with the former; and, without ſuppoſing that any collector was influenced by his commiſſion on the amount of his revenue collections, it may fairly be inferred, that no collector of an extenſive diſtrict could have given that conſtant attention to the adminiſtration of civil and criminal juſtice, and police, which the due performance of theſe important duties indiſpenſably requires.

A THIRD objection to the ſyſtem of civil juſtice, ſubſiſting under the regulations of 1787, applies equally to every ſyſtem eſtabliſhed before that of 1793; and may be conſidered to have been a principal cauſe of the claſhing of authorities noticed in the foregoing quotation. The exception of all ſuits relative to the public revenues, as well as all demands of the landholders, and farmers of land, upon their under-renters and tenants, and all complaints of the latter againſt the former, "for irregular or undue exactions, or for any oppreſſions "whatſoever," from the juriſdiction of the courts of dewanny adawlut; whilſt theſe courts were to have cognizance of all complaints and claims, relative to the property of lands, "or any right, title, claim, demand, intereſt, or lien, to or in "the ſame, or to the poſſeſſion thereof;" could not fail of rendering it "often impoſſible to determine to which tribunal" a blended complaint belonged; and the inconveniencies

Further obſervations on the ſyſtem of civil juſtice eſtabliſhed in 1787; and applicable to every ſyſtem antecedent to that of 1793.

ſtated

ſtated to have been experienced were the natural reſult. The making all complaints of exaction or oppreſſion, in the collection of the revenue and land rents, excluſively cognizable by the collector of the revenue, muſt alſo, in frequent inſtances, have ſtopped the courſe of juſtice; and, in others, have ſubjected the collector's judgment, however juſt, to ſuſpicion of its impartiality, from the known intereſt he had in realizing the revenue under his charge; and conſequently in ſupporting the landholders and farmers, from whom it was to be received, in the enforcement of their demands upon their under-renters and tenants. The ſame bias might be ſuſpected in the collector's deciſion upon caſes of exaction, or undue ſeverity, by any native officer employed under him in the public collections; and where there was no other local court, except that of the collector, to grant redreſs, it may be preſumed that the application for it was often repreſſed by fear or diſtruſt. This reaſoning does not apply to the collectors, and their ſubordinate officers, being employed to adjuſt diſputed accounts of rent between the landholders, farmers, and tenants, ſubject to appeal from their adjuſtment to an independent court of juſtice upon the ſpot. On the contrary, the greateſt convenience to the parties concerned has been found to reſult from the revenue officers, whoſe knowledge and ſituation peculiarly qualify them for ſuch adjuſtments, being thus uſefully employed, as referees, under the eſtabliſhed courts of juſtice; but it is forcibly applicable to the collector's authority as formerly ſubſiſting, excluſive in all caſes of rent or revenue demand, arrear, or exaction; and without any efficient ſuperior court of reviſion or control.

The revenue officers may be uſefully employed as referees, under the eſtabliſhed courts of juſtice; to adjuſt diſputed accounts of rent between the landholders and farmers, and their tenants.

To the remark that "people long accuſtomed to a deſpotic authority ſhould only look to one maſter," without queſtioning its general truth and propriety, may be fairly oppoſed the following obſervations of the MARQUESS CORN-

Obſervations of the Marquess Cornwallis on the arrangements propoſed by him.

WALLIS:

WALLIS:—"The propoſed arrangements only aim at inſu-
"ring a general obedience to the regulations, which we may
"inſtitute; and at the ſame time impoſe ſome check upon
"ourſelves againſt paſſing ſuch as may ultimately prove
"detrimental to our own intereſts, as well as the proſperity of
"the Country. The natives have been accuſtomed to deſ-
"potic rule from time immemorial, and are well acquainted
"with the miſeries of their own tyrannic adminiſtrations.
"When they have experienced the bleſſings of good govern-
"ment, there can be no doubt to which of the two they will
"give the preference. We may therefore be aſſured that the
"happineſs of the people, and the proſperity of the country, is
"the firmeſt baſis on which we can build our political ſe-
"curity. When the landholders find themſelves in the poſ-
"ſeſſion of profitable eſtates; the merchants and manufactu-
"rers in the enjoyment of a lucrative commerce; and all de-
"ſcriptions of people protected in the free exerciſe of their
"religion; both the numerous race of the long oppreſſed
"Hindoos, and their oppreſſors the Mahomedans, will equally
"deprecate the change of a government under which they
"have acquired, and under which alone they can hope to
"enjoy, theſe ineſtimable advantages."

IMPRESSED by theſe conſiderations; by a ſenſe of the radical defects, above ſtated, in the conſtitution of the provincial courts of judicature, which ſubſiſted at the commencement of 1793; and by the many and powerful reaſons, moral and political, which called for ſuch an adminiſtration of juſtice, as by ſecuring the private rights of every deſcription of perſons, ſhould promote the public advantage, and general proſperity of the country; the MARQUESS CORNWALLIS determined to veſt the collection of revenue, and adminiſtration of juſtice, in ſeparate officers; to aboliſh the mál adawluts, or revenue courts; and to withdraw from the collectors of revenue all judicial powers; transferring the cognizance of all cauſes hitherto

Reaſons for veſting the collection of revenue, and adminiſtration of juſtice, in ſeparate officers; for aboliſhing the revenue courts; and for withdrawing all judicial powers from the collectors.

hitherto tried by the revenue officers to the courts of dewanny adawlut. The preamble to Regulation II, 1793, contains the reasons publicly assigned for this measure, in the following terms:—" All questions between government and the land-" holders, respecting the assessment and collection of the pub-" lic revenue, and disputed claims between the latter and " their ryots, or other persons concerned in the collection " of their rents, have hitherto been cognizable in the courts " of mál adawlut or revenue courts. The collectors of the " revenue preside in these courts as judges; and an appeal " lies from their decisions to the board of revenue, and from " the decrees of that board to the Governor General in Coun-" cil in the department of revenue. The proprietors can " never consider the privileges which have been conferred " upon them as secure, whilst the revenue officers are vested " with these judicial powers. Exclusive of the objections " arising to these courts from their irregular, summary, and " often exparte proceedings, and from the collectors being " obliged to suspend the exercise of their judicial functions, " whenever they interfere with their financial duties; it is " obvious that if the regulations for assessing and collecting " the public revenue are infringed, the revenue officers them-" selves must be the aggressors; and that individuals who " have been wronged by them in one capacity, can never " hope to obtain redress from them in another. Their finan-" cial occupations equally disqualify them for administering " the laws between the proprietors of land and their tenants. " Other security therefore must be given to landed proper-" ty, and to the rights attached to it, before the desired im-" provements in agriculture can be expected to be effected. " Government must divest itself of the power of infringing, " in its executive capacity, the rights and privileges, which, " as exercising the legislative authority, it has conferred on " the landholders. The revenue officers must be deprived " of their judicial power. All financial claims of the pub-

" lic,

" lic, when diſputed under the regulations, muſt be ſub-
" jected to the cognizance of courts of judicature, ſuperin-
" tended by judges, who, from their official ſituations, and
" the nature of their truſts, ſhall not only be wholly unin-
" tereſted in the reſult of their deciſions, but bound to de-
" cide impartially between the public and the proprietors of
" land, and alſo between the latter and their tenants. The
" collectors of the revenue muſt not only be diveſted of
" the power of deciding upon their own acts, but rendered
" amenable for them to the courts of judicature; and collect
" the public dues, ſubject to a perſonal proſecution for every
" exaction, exceeding the amount which they are authorized
" to demand on behalf of the public; and for every deviation
" from the regulations preſcribed for the collection of it. No
" power will then exiſt in the country, by which the rights
" veſted in the landholders by the regulations can be infrin-
" ged; or the value of landed property affected. Land muſt
" in conſequence become the moſt deſirable of all property;
" and the induſtry of the people will be directed to thoſe im-
" provements in agriculture, which are as eſſential to their
" own welfare, as to the proſperity of the ſtate." It was ac-
cordingly enacted by Section II of the regulation above cited,
that from " the 1ſt May 1793, the courts of mál adawlut, or
" revenue courts, ſhall be aboliſhed; and the trial of the ſuits
" which were cognizable in thoſe courts, as well as all judicial
" powers whatſoever heretofore veſted in the collectors of the
" revenue, or in the board of revenue collectively, as a court
" of appeal, or in any member of that board individually, ſhall
" be transferred to the courts of dewanny adawlut."

Section II, Regulation II, 1793, aboliſhing courts of mal adawlut and judicial powers of the revenue officers.

The powers with which the revenue officers were at the ſame time inveſted, for the punctual collection of the public dues, will be noticed in a ſubſequent part of this analyſis. It is ſufficient to quote in this place the following remark from the Governor General's public minute on the occaſion.

Governor General's remark on the powers requiſite to enforce the collection of the public revenue; and the neceſſity of courts of juſtice to prevent an abuſe of ſuch powers.

" There

" There is no claſs of men which government ſhould watch " with greater jealouſy, and over whom the regulations ſhould " have a ſtricter control, than the officers who are entruſted " with the collection of the public revenue. It is neceſſary to " arm them with powers to enforce their demands in the firſt " inſtance; otherwiſe individuals, under the pretext of diſpu- " ting the juſtneſs of it, might protract the payment of what is " due from them; and render the collection of the public " revenue either impracticable, or an endleſs ſource of trouble " and litigation. But to prevent the abuſe of this power, " there ſhould be courts of juſtice ready to puniſh oppreſſion, " and exaction; and the people muſt be ſatisfied that the " remedy will be certain and effectual; and that it can be " expeditiouſly obtained." The wiſdom of this principle is confirmed by the ſentiments of a celebrated writer on juſtice and polity, already referred to*, who obſerves, that " the eſtabliſh- " ment of courts of juſtice is particularly neceſſary to decide " the cauſes relating to the revenue; that is, all diſputes that " may ariſe between thoſe who are employed in behalf of the " prince and the ſubjects;" and adds that, " in all well regula- " ted ſtates, in countries that are really ſtates, and not the do- " minions of a deſpotic prince, the ordinary tribunals decide " the cauſes in which the ſovereign is concerned, with as " much freedom as thoſe between private perſons." In purſuance of this juſt practice, and to render the judicial authority, in this portion of the Britiſh ſtate, effectual, in all caſes, for the protection of private rights; or to uſe the terms of the preamble to Regulation III, 1793, " to enſure to the people of this " country, as far as is practicable, the uninterrupted enjoy- " ment of the ineſtimable benefit of good laws duly adminiſter- " ed," government determined " to diveſt itſelf of the power " of interfering in the adminiſtration of the laws and regula- " tions in the firſt inſtance; reſerving only, as a court of ap-

Confirmed by the ſentiments of a celebrated writer on juſtice and polity.

Conſequent determinations of Government, as ſtated in the preamble to Regulation III, 1793.

* VATTEL, Book I, Chapter XIII.

" peal

" peal or review, the deciſion of certain caſes in the laſt reſort;
" and to lodge its judicial authority in courts of juſtice; the
" judges of which ſhould not only be bound by the moſt ſo-
" lemn oaths to diſpenſe the laws and regulations impartially;
" but be ſo circumſtanced as to have no plea for not diſcharg-
" ing their high and important truſt with diligence and up-
" rightneſs." It was reſolved, " that the authority of the laws
" and regulations, ſo lodged in the courts, ſhall extend, not
" only to all ſuits between native individuals, but that the offi-
" cers of government, employed in the collection of the reve-
" nue, the proviſion of the Company's inveſtment, and all
" other financial concerns of the public, ſhall be amenable to
" the courts, for acts done in their official capacity, in oppo-
" ſition to the regulations;" and that government itſelf, in ſu-
perintending theſe various branches of the reſources of the
ſtate, might be precluded from injuring private property, it
was further determined " to ſubmit the claims and intereſts of
" the public, in ſuch matters, to be decided by the courts of
" juſtice, according to the regulations, in the ſame manner as
" ſuits between individuals."

Section X, Regulation III, 1793, declaring certain public officers, European and natives, amenable to the civil courts, for acts done in their official capacities, in oppoſition to the regulations.

It was accordingly declared by Section X, Regulation III, 1793, (extended to Benares by Section VII, Regulation VII, 1795, and re-enacted for the ceded provinces by Section VII, Regulation II, 1803,) that " collectors of the revenue and their
" aſſiſtants and native officers, commercial reſidents and agents,
" and their aſſiſtants and native officers employed in the proviſi-
" on of the inveſtment, ſalt agents, and their aſſiſtants and native
" officers, concerned in the manufacture of ſalt, the collectors of
" the cuſtoms, and their aſſiſtants and native officers, employed
" in the collection of the cuſtoms, the mint and aſſay maſters,
" and their aſſiſtants and native officers, are amenable to the
" zillah or city court, in the juriſdiction of which they may
" reſide, or carry on the public buſineſs committed to their
" charge, for any acts done in their official capacity, in oppo-

" ſition

" ſition to any regulation printed and publiſhed in the manner
" directed in Regulation XLI, 1793." It was further preſcri-
bed by Section XI, Regulation III, 1793, (extended to Benares
by Section VII, Regulation VII, 1795, and re-enacted for the
ceded provinces by Section XV, Regulation II, 1803,) that
" if a native, or any other perſon not being a Britiſh ſubject,
" ſhall conſider himſelf aggrieved, under any regulation prin-
" ted and publiſhed in the manner directed in Regulation
" XLI, 1793, by an act done by any of the officers of govern-
" ment deſcribed in Section X, purſuant to a ſpecial order
" originating with the Governor General in Council, or the
" board of revenue, or of trade, the officer by whom the act
" may be done, is not liable to be ſued for it. In ſuch caſes,
" government is to be conſidered as the defendant; and the
" perſon deeming himſelf aggrieved is to preſent a petition to
" the judge of the dewanny adawlut of the zillah, or city, to
" which the officer, by whom the act complained of may have
" been done, ſhall be amenable in his public capacity; ſtating
" wherein he conſiders himſelf injured under the regulations;
" and praying, that the Governor General in Council will
" order the court of dewanny adawlut, in which the cauſe
" may be cognizable, to try the points or matters conteſted,
" agreeably to the regulations. The judge, to whom the
" petition may be preſented, is to forward it immediately to
" the Governor General in Council; who, provided he ſhall
" not think it proper to afford the redreſs that may be ſolici-
" ted by the petitioner, and the courts of juſtice ſhall be com-
" petent to try the cauſe, will direct the court, in which it may
" be cognizable, to proceed to the trial of it. If the Gover-
" nor General in Council ſhall order the cauſe to be tried, the
" court is immediately to ſend a written notification of the
" order to the complainant; and the cauſe is to be conſidered
" as filed in the court from the date of the notification. The
" court is then to proceed to try the ſuit, under the ſame rules
" and regulations as are preſcribed for the trial of ſuits be-
" tween individuals."

Further provision by Section XI, Regulation III, 1793, for redress of grievances, under the regulations, by acts done in purſuance of ſpecial orders from the Governor General in Council, or from the boards of revenue and trade.

PREVIOUSLY

Zillah and city courts eſtabliſhed for adminiſtering civil juſtice, in the firſt inſtance

PREVIOUSLY to a ſpecification of theſe rules, or the principal of them, it will be proper to ſtate what courts have been eſtabliſhed for the adminiſtration of civil juſtice, in the firſt inſtance, with their reſpective juriſdictions.

R. III, 1793. § II.

BY Regulation III, 1793, twenty-three zillah, and three city, dewanny adawluts, or courts of civil judicature, were eſtabliſhed in the ſeveral diſtricts of Bengal, Behar, and Oriſſa; and in the cities of Dacca, Moorſhedabad and Patna. Of this number, two zillah courts, viz. that of the twenty-four pergunnahs, annexed to zillah Hooghly, and that of Cooch Behar, annexed to zillah Rungpore, have been diſcontinued; but, under Regulations XXXVI, 1795, and VII, 1797, two additional courts have been inſtituted for the zillahs of Hooghly and Backergunge. Two courts have alſo been added to the province of Oriſſa, for the diviſions of Cuttac, ſpecified in Regulation IV, 1804. By Regulation VII, 1795, one city, and three zillah courts were eſtabliſhed for the province of Benares; of which the Ghazeepore zillah court has been ſince aboliſhed, and its juriſdiction divided betwcen the other three courts. By Regulation II, 1803, ſeven zillah courts were eſtabliſhed in the provinces ceded by the Nuwab Vizeer. And by Regulation IX, 1804, the territories ceded by the Peſhwa, and Doulut Rao Sendheeah*, have been divided into ſix zillahs; in each of which a civil court is eſtabliſhed. Theſe courts are all ſuperintended by an European judge; aſſiſted by a

R. XXXVI, 1795 § VII
R. VII, 1797. § II.

R. IV, 1804. § II
R. VII, 1796. § II.

R. II, 1803. § II.

R IX, 1804. § III, and IV.

Conſtitution of theſe courts.

* The ſame Aſiatic words being ſometimes ſpelt differently in this Analyſis, it is neceſſary to remark, that no correct ſyſtem of orthography has been attempted; and that the names of perſons, places, and things, are in general written according to eſtabliſhed practice; eſpecially ſuch as occur in the regulations: where any accentual marks have been uſed, a, e, i or ee, ó, ú or oó, expreſs the long vowels; a or u, e, i, o, oo, the ſhort vowels; ai or ý, and aú or oú, the diphthongs compoſed of the firſt and third, and firſt and fifth, vowels; and ŝ the peculiar Arabic letter, *âyn*, which Sir WILLIAM JONES, (whoſe ſyſtem of orthography has been chiefly followed) propoſes to note uniformly by a circumflex. It has not however been deemed neceſſary, in this tract, to adopt his diſcriminative notation of the conſonants; though well calculated for the object intended by him; and for all works, in which a preciſe diſcrimination of the original characters is required.

Mahomedan

Mahomedan and Hindoo law officer; by a regiſter, who is a covenanted ſervant of the Company; in ſome inſtances by an aſſiſtant to the regiſter, being alſo a covenanted ſervant; and by an eſtabliſhment of native miniſterial officers. Previouſly to entering upon the execution of the duties of his office, the judge is required to take and ſubſcribe an oath, of which the form is preſcribed in the regulations referred to; and the ſubſtance of which has been already ſtated in the preceding ſection. By the ſame regulations the uſe of an official ſeal is directed: the courts "are to be held in a large "and convenient room, in the city or place at which they "are reſpectively eſtabliſhed, three days in every week; or "oftener, if the ſtate of the buſineſs ſhould render it neceſ-"ſary;" and "no rule, order, proceeding or decree is to be "made, but on court days, and in open court."

R. III, 1793. § III, V, and VI.

R. II, 1803. § XIII, and XIV.

Their local juriſdiction.
R. III, 1793. § IV.
R. VII, 1795. § IV.
R. II, 1803. § III.

What perſons amenable to them.
R. III, 1793. § VII, and IX.
R. XXVIII, 1793. § II, to VIII.
R. II, 1803. § IV, and VI.
R. XVIII, 1803. § II, to VIII.

THE local juriſdiction of the ſeveral courts extends to all places that are, or may be included, within the limits of the zillahs and cities in which they are reſpectively eſtabliſhed. All natives, as well as Europeans and other perſons not Britiſh ſubjects, reſiding out of Calcutta, are amenable to the juriſdiction of the zillah and city courts; which are further declared to have juriſdiction over all Britiſh ſubjects, excepting King's officers, ſerving under the preſidency of Fort William, and the military officers and covenanted civil ſervants of the Company, ſo far as not to allow them to reſide, at a greater diſtance than ten miles from Calcutta, unleſs they execute a bond, the form of which is preſcribed in Regulation XXVIII, 1793; (extended to Benares by Regulation XXIV, 1795, and re-enacted for the ceded provinces by Regulation XVIII, 1803;) to render themſelves amenable to the court within whoſe juriſdiction they may reſide, in all ſuits of a civil nature that may be inſtituted againſt them by natives, or perſons not Britiſh ſubjects, in which the amount claimed may not exceed five hundred ſicca rupees. It is provided by the ſame

ſame regulations, that when any Britiſh ſubject, or other perſon not amenable to the juriſdiction of the zillah and city courts, ſhall inſtitute a ſuit againſt a perſon amenable thereto, he (the plaintiff) is to execute an inſtrument, of the nature of an arbitration bond, (the amended form of which is contained in Section II, Regulation XI, 1797,) declaring himſelf ſubject to the juriſdiction of the court, for ſo much as ſhall relate to the ſuit in queſtion; and binding himſelf to abide by the award or decree of the court, in the ſame manner and to the ſame extent, as the juriſdiction of the court is valid againſt the defendant. If the plaintiff refuſe to execute ſuch inſtrument, his plaint is not to be received or filed.

R. XVIII, 1793. § VII.

R. XI, 1797. § II.

R. XVIII, 1803. § VII.

THE equity and neceſſity of the latter of theſe proviſions, reſpecting Britiſh ſubjects of every deſcription, who may have recourſe, as plaintiffs, to the zillah or city courts, for the recovery of their demands upon perſons amenable to thoſe courts, are evident. To have the benefit of the local court, in recovering what is juſtly due to them from the native inhabitants, or others within its juriſdiction, without being themſelves bound to obſerve and fulfil the judgment paſſed upon their reſpective claims, would be manifeſtly inconſiſtent with the ends of juſtice. The reaſons ſtated in the preamble to Regulation XXVIII, 1793, (and Regulation XVIII, 1803, for the ceded provinces,) evince alſo the propriety of rendering Britiſh ſubjects, not in the ſervice of the King or Company, who reſide in the interior parts of the country, generally for commercial purpoſes, amenable as defendants, to the civil court of the juriſdiction in which they reſide, in ſuits for a ſmall amount, that could not be proſecuted, without great inconvenience, and diſproportionate expence, in the ſupreme court at the preſidency. Such Britiſh ſubjects "may recover with facility, and at a moderate expence, their "claims upon the native or other inhabitants of the Com-"pany's territories, who are declared amenable to the courts "of

Equity and neceſſity of proviſions reſpecting Britiſh ſubjects.

Preamble to Regulations XXVIII, 1793, and XVIII, 1803.

" of dewanny adawlut, by inſtituting a ſuit againſt them in " the court of the zillah or city in which they reſide; but " the natives of the country, and all other perſons ſubject to " the juriſdiction of the dewanny courts, have no means of " obtaining redreſs againſt ſuch Britiſh ſubjects, except by " ſuing them in the ſupreme court of judicature at Calcutta. " The manufacturers therefore, as well as the immediate cul- " tivators of the ſoil, and the lower orders of the people, " with whom ſuch Britiſh ſubjects neceſſarily have extenſive " dealings, are in fact precluded from all redreſs in the event " of their being wronged; as it is obviouſly impracticable for " the generality of perſons of theſe deſcriptions to quit their " families and occupations, and perform a journey, probably " of ſeveral hundred miles, to ſue for ſmall demands, in a " court proceeding and deciding according to laws, and in a " language, with both of which they are equally unacquaint- " ed, and at an expence that the opulent only can ſupport." As the Coſſeas, and other mountaineers on the frontier of Sylhet, from whom chunam, and various articles of trade are purchaſed, could not, from their ſituation, proſecute claims upon Britiſh ſubjects for ſums exceeding five hundred rupees, in the ſupreme court, at Calcutta, it is further enacted by Section VII, Regulation I, 1799, that " ſuch Britiſh born ſubjects as may be permitted to reſide within the diſtrict of Sylhet, (with the above exception of King's officers, and civil and military ſervants of the Company) ſhall, in addition to the form of bond preſcribed by Section III, of Regulation XXVIII, 1793, execute a bond of ſimilar tenor, but without the limitation of five hundred rupees, rendering themſelves amenable to the juriſdiction of the zillah dewanny adawlut, in all ſuits for whatever amount or value, that may be inſtituted againſt them by any of the inhabitants of the hills on, or contiguous to, the Company's frontier in Sylhet."

R. I, 1799. § VII.

Exceptions to the general rule,

The only exception, expreſsly provided by the regulations,

tions, to the general rule, declaring natives amenable to the civil courts of juſtice, is contained in Section VIII, of Regulation II, 1803; whereby it is enacted, in conſormity with the ſixth article of a treaty concluded with the Nuwab of Furrukhabad, on the 4th of June 1802, that "the authority of the court of adawlut ſhall not extend to the perſon of the Nuwab; but as his connections and dependants are undefined, and as it is the object of the Britiſh Government to introduce a fair and impartial adminiſtration of juſtice, throughout the province of Furruckabad; it is agreed, that whatever complaint may be preferred againſt any of the Nuwab's dependants, ſhall, in the firſt inſtance, be referred to the Nuwab; and in the event of the complainant not receiving ſpeedy juſtice, or being diſſatisfied with the Nuwab's deciſion, the complaint ſhall be decided in the adawlut." It is however underſtood, that the Nazim of Bengal is alſo, by his ſtation, perſonally exempted from the common proceſs of the civil courts; and the following proviſion has been made in Section X, of Regulation XVI, 1793, for the reference of certain caſes to him in the firſt inſtance: "In complaints brought before any zillah or city court, in which it ſhall appear either by the application of the Nazim, or the repreſentation of the defendant, at or before the time of giving in his or her anſwer, or by the petition of the complainant, that both parties are ſervants or relations of His Excellency, or the widows or female deſcendants of the former Nazims of Bengal; the parties are to be referred for juſtice to the Nazim, or to any perſon whom he may appoint to diſpenſe it. Upon a complaint being preferred againſt any ſervant or ſervants of His Excellency, by perſons of a different deſcription, the court in which the complaint may be inſtituted, is either to refer it to His Excellency, or to hear it in the ordinary manner, according to its diſcretion; *taking care at all times, and in all matters, to pay every proper attention to the dignity and long eſtabliſhed rights of the Nuwab.* Provided however, that in all

declaring natives amenable to the civil courts. Reg. II, 1803, § VIII.

Nuwab of Furrukhabad.

Nazim of Bengal.

Reg. XVI, 1793, § X.

caſes

caſes in which either the plaintiff or defendant ſhall prefer the juriſdiction of the courts, to that of the Nazim, the judge is to try and determine the ſuit, in the ſame manner as if neither of the parties had been perſons of the deſcription ſpecified in this ſection."

Reg. XV, 1795, § III.

Rajah of Benares.

A further proviſion has been made by Section III, of Regulation XV, 1795, for excepting from judicial cognizance, and referring to the Rajah of Benares, ſubject to the control of the collector of that province, and ultimately to the deciſion of the Governor General in Council, complaints relative to undue exactions of revenue, breach of agreement in reſpect to pottahs (leaſes), or the reſumption of lands exempted from the payment of revenue, in the jageer, ultumgha, and other private lands appertaining to the Rajah, as ſpecified in the ſection above noticed. But this exception, made in purſuance of an agreement concluded by the reſident at Benares with Rajah Maheepnarain, under date the 27th October 1794, does not extend to any other complaints or ſuits preferred againſt the Rajah of Benares; although, in common with the principal Mahájuns, or bankers, of the city of Benares, known under the denomination of *Nouputty*, and the *Baboos*, or perſons of his blood and family, he is exempted by Section X, of Regulation VIII, 1795, from furniſhing the perſonal ſecurity, required from other defendants in civil cauſes, during the trial of them in the firſt inſtance; and the court receiving a claim upon ſuch privileged defendants, is directed to iſſue, inſtead of the uſual ſummons, merely a notice to them; containing a ſhort account of the demand, and fixing a day for them to appear and anſwer the ſame, either in perſon, or by an authorized repreſentative.

R. VIII, 1795, § X.

What ſuits are cognizable by the zillah and city courts.

R. III, 1793, § VIII.

"The zillah and city courts reſpectively are empowered to take cognizance of all ſuits and complaints, reſpecting the ſucceſſion or right, to real or perſonal property, land-

rents,

rents, revenues, debts, accounts, contracts, partnerſhips, marriage, caſt, claims to damages for injuries, and generally of all ſuits and complaints of a civil nature," in which the defendant may be amenable to their juriſdiction; "provided the landed or other real property to which the ſuit or complaint may relate, ſhall be ſituated, or in all other caſes, the cauſe of action ſhall have ariſen, or the defendant, at the time when the ſuit may be commenced, ſhall reſide as a fixed inhabitant, within the limits of the zillah, or city, over which their juriſdiction may extend." The town of Calcutta, which is under the immediate juriſdiction of the ſupreme court, not being compriſed in that of any zillah or city court, the above powers do not include the cognizance of any ſuits for land, or other real property, ſituated within the limits of Calcutta; nor any perſonal actions, againſt the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally conſidered excluſively cognizable by the ſupreme court*. The ſpecial or limited juriſdiction of the zillah and city courts, in particular caſes, provided for by the regulations, will be hereafter noticed: but it may be remarked in this place, that when a landed eſtate is ſituated in two, or more, zillah or city juriſdictions, it has been held by the ſudder dewanny adawlut to be conſiſtent with the ſpirit

R. II, 1803, § V.

Exception, with reſpect to the town of Calcutta.

R. III, 1793, § XVII.

R. II, 1803, § XII.

Claims to eſtates, in two or more juriſdictions, by what court to be tried.

* Under Section XVII, Regulation III, 1793, the dewanny adawlut of the zillah of the twenty-four pergunnahs was authorized to entertain ſuits, "concerning marriage or caſts, in which no money or other valuable thing may be demanded, although the cauſe of action ſhall have ariſen, or the defendant may reſide, within the limits of the town of Calcutta." But the zillah court of the twenty-four pergunnahs having been diſcontinued, it may be queſtioned whether this power is now veſted in the judge of zillah Hooghly; and the exerciſe of it does not appear requiſite, as the ſupreme court has juriſdiction in all caſes of marriage and caſt. By Section VIII, 21 GEORGE III, Cap. 70, it is enacted, that the "ſupreme court ſhall not have, or exerciſe, any juriſdiction, in any matter concerning the revenue, or concerning any act or acts, ordered or done in the collection thereof, according to the uſage and practice of the country, or the regulations of the Governor General and Council." But by Section XVII, of the ſame Statute, the authority of that court is reſerved, as before, in "all manner of actions and ſuits againſt all and ſingular the inhabitants of Calcutta." It has therefore been directed by government, (on a reference from the ſudder dewanny adawlut in November 1797) that whenever it may be neceſſary to apprehend a revenue defaulter, reſident in Calcutta, application for that purpoſe be made, through the board of revenue, to the Governor General in Council, who, if it appear to him proper, will order the attachment of the defaulter's perſon by the revenue officers.

and

and meaning of the regulations, as well as conducive to juſtice, that a claim to the entire eſtate ſhould be received, and tried, by the court of the juriſdiction in which the greater part of the eſtate may be ſituated*; unleſs it be deemed proper, in any ſuch caſe, by the Governor General in Council, or by the ſudder dewanny adawlut, to direct the ſuit to be tried and determined, in the firſt inſtance, by the provincial court of appeal, in conformity with Section VI, Regulation V, 1793.

Civil courts prohibited from interference in criminal caſes. Except for contempt, and perjury. R. III, 1793, § XVIII. R. IV, 1793, § XIV, and XXI. R. II, 1803, § XL. R. III, 1803, § VIII, and XXII.

The civil courts are "prohibited from interfering, in any "reſpect, in any cauſe or matter of a criminal nature, de- "clared cognizable by the magiſtrates," and criminal courts; except for contempt, and perjury, committed in open court; the former of which, as well as any undue arrogation, or illegal exertion, of judicial authority, they are authorized to puniſh, by a fine not exceeding two hundred rupees; and in caſes of wilful and corrupt perjury, in any cauſe or matter depending in court, the judge is immediately to commit the offender to cloſe cuſtody to take his trial before the court of circuit. This reſtriction againſt the interference of the civil courts, in caſes declared cognizable by the criminal courts, being obviouſly intended only to prevent the former, whoſe province is the reparation of private injuries, from exerciſing the powers veſted in the latter, for the ends of public juſtice; it muſt not be underſtood to prohibit a civil action for damages in caſes of perſonal injury, as allowed by the laws of England, inſtead of, or in addition to, a criminal proſecution. On the contrary, the criminal courts, which under Section XXII, Regulation IX, 1793, might have directed a pecuniary compenſation to be made to the party injured, having been

This reſtriction not meant to prohibit a civil action for damages in caſes of perſonal injury.

* On the 15th March 1798, the court of ſudder dewanny adawlut directed that the claim of Rajah Bishunkoonwur, to lands ſituated partly in zillah Burdwan, and partly in zillah Hooghly, ſhould be tried by the judge of the former diſtrict. In another caſe; wherein the diſputed lands were on the boundaries of two zillahs, in the Dacca diviſion; the provincial court of that diviſion were ordered to try the ſuit, in the firſt inſtance.

expreſsly

expreſsly forbidden, by Regulation XIV, 1797, to adjudge pecuniary compenſations, or damages, (the reimburſement of coſts excepted) in any criminal proſecution; it is indiſpenſably neceſſary, for maintaining the ſettled principle of law, "that every right when with-held muſt have a remedy, and "every injury its proper redreſs*," to conſider the power veſted in the civil courts, of receiving all ſuits for "claims to "damages for injuries," as extending, not only to every injury of property; but alſo to every perſonal injury; whether by actual bodily hurt or inſult, by unlawful impriſonment, or by malicious defamation, affecting character, caſt, or livelihood. By Section VII, Regulation II, 1805, however, "all ſuits and complaints for penal damages are required to be preferred to the proper courts of juſtice, within one year after the cauſe of action ſhall have ariſen; or as ſoon afterwards as it may be in the power of the party aggrieved to prefer the ſame." And with regard to all actions of this deſcription which are merely perſonal, ariſing *ex delicto*, for wrongs committed by the defendant, and not involving any claim to property, or compenſation for the loſs of it, the Engliſh rule of law is applicable, that *actio perſonalis moritur cum perſona* †.

R. II, 1805. § VII.

THE zillah and city courts are alſo "prohibited from entertaining any cauſe, which from the production of a former decree, or the records of the court, ſhall appear to have been heard and determined by any former judge, or any ſuperintendent of a court having competent juriſdiction. If any doubt ariſe, reſpecting the competency of the former juriſ-

Reſtricted alſo from entertaining a cauſe heard and determined by a competent court. R. III, 1793. § XVI. R. VII, 1795. § X. R. II, 1803. § X.

* Vide BLACKSTONE, Book III, Cap. 7: wherein the maxim quoted, is ſtated to be "A ſet-"tled and invariable principle in the laws of England." It may be ſaid that the proper redreſs for criminal injuries is inflicted by the criminal courts. But puniſhment of the offender, however proper to deter him, or others, from committing the like offence, is no retribution to the party injured; and it might perhaps be expedient to reinveſt the criminal courts with a qualified power of adjudging ſuch reparation in certain caſes; as well to overcome the general reluctance to proſecute in thoſe courts; as to obviate the neceſſity of a ſecond proſecution, for damages, in the civil courts.

† BLACKSTONE, Vol. III, page 302.

diction, the judges are to report the circumſtances to the ſudder dewanny adawlut and wait the inſtructions of that court*." And after "a ſuit ſhall have been inſtituted in the court of any zillah or city, in which it may have been cognizable, no other zillah or city court is to entertain a ſuit for the ſame cauſe of action; but on proof of the inſtitution of a prior ſuit, in another competent court, for the ſame cauſe of action, the court in which the ſecond ſuit may be brought is to diſmiſs it with coſts. The judge is further empowered to impoſe a fine in ſuch caſes, as well as in all caſes wherein the ſuit may appear to him frivolous, vexatious, or groundleſs; "in ſuch amount as he may think proper, upon a conſideration of the nature of the caſe, and the ſituation, and circumſtances in life, of the offender."

R. III. 1793. § XII. R. II, 1803. § IX.

On a ſecond ſuit, after the inſtitution of a prior ſuit in another court.

A fine, beſides coſts, may be impoſed in ſuch caſes, as in all vexatious or groundleſs complaints.

Intention of preceding rules.

The ſalutary intention of theſe rules is, obviouſly, to check litigiouſneſs; ſecure the right and poſſeſſion of property held under judicial deciſions; and guard againſt a perverſion of the public courts of judicature, from the juſt and benevolent ends of their inſtitution, to become the inſtruments of private enmity, perſecution and oppreſſion. In applying them therefore, this intention ſhould be ſtrictly attended to; and error, or ignorance, ſhould not be blended with deliberate fraud, or malice: nor can the reſtriction againſt rehearing a cauſe, already heard and determined, be conſidered applicable to any ſuit diſmiſſed, in the firſt inſtance, for ſome neglect or default only; without an inveſtigation of, and deciſion upon, the merits of the caſe. Sufficient proviſion has

* On the 3d Auguſt 1795, the court of ſudder dewanny adawlut, in anſwer to a reference from the judge of Chittagong, whether an application to the committee of revenue, in a caſe of landed property, was to be conſidered as made to a court of competent juriſdiction, within the meaning of Section XVI, Regulation III, 1793: declared their opinion that it was not; both as the court were not informed of any powers veſted in the committee of revenue, to take cognizance of ſuch caſes, ſince the inſtitution of courts of dewanny adawlut in 1772; and as theſe courts, from the time of their inſtitution, have been the regular conſtituted authorities, for the receipt, inveſtigation, and deciſion, of all claims of this deſcription.

indeed

indeed been made by the regulations, to prevent or remedy an injurious misapplication of them in this respect; as well as to authorize a revision of erroneous judgments, in causes not appealable, upon sufficient grounds being stated to the satisfaction of the sudder dewanny adawlut; as will be subsequently more fully specified.

Limitations of time for the cognizance of actions in the zillah and city courts.

By Section XIV, Regulation III, 1793, the zillah and city courts of Bengal, Behar, and Orissa, were prohibited from "hearing, trying or determining the merits of any suit whatever, against any person or persons, if the cause of action "shall have arisen previous to the 12th August 1765;" (the date of the dewanny grant to the Company for the above provinces;) "or any suit whatever, against any person or persons, if the cause of action shall have arisen twelve years "before any suit shall have been commenced on account of "it; unless the complainant can shew, by clear and positive "proof, that he had demanded the money, or matter in question, and that the defendant had admitted the truth of "the demand, or promised to pay the money," (within the last twelve years, so as to constitute a new ground of action within the limited period;) "or that he directly preferred "his claim within that period," (viz. within twelve years after the origin of the cause of action,) "for the matters in "dispute, to a court of competent jurisdiction, to try the "demand; and shall assign satisfactory reasons to the court "why he did not proceed in the suit; or shall prove that "either from minority, or other good and sufficient cause, "he had been precluded from obtaining redress." Similar prohibitions were extended, by Section VIII, Regulation VII, 1795; to the province of Benares, with a substitution of the 1st July 1775, (the date of the actual cession of that province to the Company, under the treaty with the Nuwab Vizeer, of the 21st May preceding;) and with an exception of claims founded on bonds, which may have been in a course of payment

R. III, 1793, § XIV. Bengal, Behar, and Orissa.

Preamble to Reg. II, 1805.

R. VII, 1795, § VIII. Benares.

payment by inſtalments; or of which any proportion may have been paid within twelve years previous to the inſtitution of the ſuit. Alſo of all claims on mortgages; the period for rendering which unactionable was left to be determined "by the law of the religion of the defendant." The claims of village zemindars, for reſtoration to their zemindarries, of which they were diſpoſſeſſed by the Rajahs BULWUNT SING and CHYT SING, before the year 1775; and whoſe lands, in many inſtances, were farmed out at the period of making the decennial ſettlement of Benares (1789), in conſequence of Rajah MAHEEPNARAIN'S declining, at that time, to reſtore them, though he ſubſequently acquieſced in the meaſure as ſpecified in the fifth clauſe of Section III, Regulation I, 1795; are likewiſe virtually excepted by the proviſion in that clauſe, from the general limitation of 1ſt July 1775. By the firſt and ſecond clauſes of Section XVIII, Regulation II, 1803, the courts of adawlut, in the provinces ceded by the Nuwab Vizeer on the 10th November 1801, "are prohibited from "hearing, trying, or determining, the merits of any civil ſuit "whatever, if the cauſe of action ſhall have ariſen at a pe-"riod, being twelve years, antecedent to the date on which "the petition for the inſtitution of ſuch ſuit ſhall be pre-"ſented to the court;" and the powers veſted in them, under this limitation, to receive and try ſuits in which the cauſe of action may have originated prior to the 10th day of November 1801, are declared to be reſtricted to "ſuits of a "private nature, between individuals; of which cognizance "would have been taken by the courts, officers, or autho-"rities, eſtabliſhed for the adminiſtration of juſtice under the "government of the Nuwab Vizier." By the third clauſe of the ſame ſection, after twelve years ſhall have elapſed from the date of the ceſſion of theſe provinces, the general limitation of twelve years, with the exceptions before cited from Section XIV, Regulation III, 1793, is extended to them; under a proviſion, to take effect from the ſame period, (viz.

R. I, 1795, § III. Preamble to Reg. II, 1803.

R. II, 1803, § XVIII. Ceded provinces.

the

the 10th November 1813;) "that it ſhall not be competent "to the zillah courts, under the powers veſted in them by "this clauſe, to hear, try, or determine, the merits of any "civil ſuit whatever, if the cauſe of action ſhall have ariſen "previous to the 10th day of November 1801."

Preamble to Regulation II, 1806 Explanation of limit of twelve years

THE period of twelve years, adopted in all the regulations abovementioned, appears to have been eſtabliſhed, when the adminiſtration of civil juſtice was firſt committed to the ſervants of the Company, on the inſtitution of courts of dewanny adawlut in 1772; and in the plan, then propoſed by the committee of circuit, it is remarked, that "by the Ma- "homedan law all claims which have lain dormant for twelve "years, whether for land or money, are invalid. This alſo "is the law of the Hindoos; and legal practice of the coun- "try." This obſervation does not appear to be correct with reſpect to the Hindoo and Mahomedan laws; though it may have been, with regard to the legal practice of the country; and whether previouſly eſtabliſhed, or not, the rule having now been ſo long in force, it would be improper to abrogate it. But the declared grounds on which this limitation was introduced, viz. "the litigiouſneſs and perſeverance of the na- "tives of this country, in their ſuits and complaints, often "productive not only of inconvenience and vexation to their "adverſaries, but alſo of endleſs expence and actual oppreſ- "ſions", are not applicable to ſuits for the recovery of public rights and dues, inſtituted on the part of Government, under the proviſions made by the Regulations for ſubjecting the public claims and intereſts to the cognizance and deciſion of the eſtabliſhed courts of juſtice. For ſuch ſuits and claims, the unlimited time, heretofore allowed by the laws of England, (as by thoſe of the Hindoos) has been latterly reſtricted to a period of ſixty years; * being the largeſt period

Not applicable to public ſuits, inſtituted on the part of Government

* By the Statute IX, Geo. III, Cap. 16. Vide BLACKSTONE, Vol. III, P. 307.

fixed

Period of 60 years allowed by the Hindoo law to eſtabliſh a right of property in caſes of unmoleſted poſſeſſion, without proof of a bad title.

Diſtinction between bonâ fide and malâ fide poſſeſſion.

fixed for the judicial cognizance of the claims of individuals in particular caſes. This period is recognized by the proviſions of the Hindoo Law in regard to individuals; and is not incompatible with thoſe of the Mahomedan law. Under the former it is applied to private rights and claims, in caſes of unmoleſted poſſeſſion, without proof of a bad title. And the diſtinction between *bonâ fide* poſſeſſion, under a title believed good and ſufficient, and *malâ fide* poſſeſſion, obtained by fraud or violence, and therefore known to be inſufficient, has been taken in the Hindoo Law, as in the laws of all countries, wherein the long and peaceable poſſeſſion of things capable of becoming private property, under a juſt title, believed by the poſſeſſor to have veſted in him a full right of property, is held and admitted to have eſtabliſhed ſuch right of poſſeſſion and property; or at leaſt to bar any legal claim againſt the poſſeſſor. On conſideration therefore of the ſeveral circumſtances ſtated, (as ſet forth in the preamble to Regulation II, 1805), and with a view to provide more effectually for ſecuring the rights of the public, and of individuals, in the ſeveral caſes recited, the following explanatory, and additional, rules have been recently enacted by His Excellency the Moſt Noble the Governor General in Council.

Explanatory and additional proviſions made by Regulation II, 1805.

Section II.

"THE limitation of twelve years for the commencement of civil ſuits, under certain proviſions and exceptions, which, in purſuance of former rules and practice, has been continued and preſcribed by Section XIV, Regulation III, 1793: Section VIII, Regulation VII, 1795; and Section XVIII, Regulation II, 1803; ſhall not be conſidered applicable to any ſuits for the recovery of the public revenue, or for any public right or claim whatever, which may be inſtituted by, or in behalf of, Government, with the ſanction of the Governor General in Council, or by direction of any public officer or officers, who may be duly authorized to proſecute the ſame on the part of Government. All claims

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on the part of Government, whether for the aſſeſſment of land held exempt from the public revenue without legal and ſufficient title to ſuch exemption, or for the recovery of arrears of the public aſſeſſment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwiſe limited by ſome ſpecial rule or proviſion in force) ſhall be heard, tried, and determined in the ſeveral courts of civil juſtice, to which the cognizance thereof may properly belong, under the general regulations which have been or may be hereafter enacted, if the ſame be regularly and duly preferred at any time within the period of ſixty years from and after the origin of the cauſe of action: provided that ſuch cauſe of action ſhall not have originated, within the provinces of Bengal, Behar, and Oriſſa, before the 12th Auguſt A. C. 1765; or within the province of Benares, before the 1ſt July A. C. 1775; or within the provinces ceded by the Nawaub Vizier before the 10th November A. C. 1801; being the periods of the Company's acceſſion to the civil government of the above provinces reſpectively."

Section III.

"THE limitation of twelve years fixed by Section XIV, Regulation III, 1793, Section VIII, Regulation VII, 1795, and Section XVIII, Regulation II, 1803, ſhall alſo not be conſidered applicable to any private claims of right to lands, houſes, or other permanent, immovable property; if the perſon or perſons in poſſeſſion of ſuch property, when the claim of right thereto may be preferred in a competent court of judicature, ſhall have acquired poſſeſſion thereof by violence, fraud, or by any other unjuſt, diſhoneſt means whatever; or if ſuch property ſhall have been ſo acquired by any other perſon or perſons from whom the actual occupant or occupants may have derived his or their title, and ſhall not have been ſubſequently held under a juſt and honeſt title (ſuch as inheritance, purchaſe, fair donation, or any other fair title, believed to have conveyed a right of poſſeſſion and property) during

Clauſe firſt.

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a period of twelve years, antecedent to the time of preferring a claim of right thereto in a competent court: provided that ſuch violent, fraudulent, unjuſt, or diſhoneſt acquiſition be eſtabliſhed to the ſatisfaction of the court in which the claim may be preferred; or, if the ſuit be appealable, to the ſatisfaction of the proper court of appeal."

Clauſe ſecond. "In all ſuch caſes, viz when the original cauſe of action may have ariſen more than twelve years before the inſtitution of the ſuit, and the claim may not be cognizable under the exceptions and proviſions contained in the regulations and ſections above cited; but may be nevertheleſs cognizable under the proviſion made by the preceding clauſe, from the defendant's having acquired poſſeſſion of the claimed property by violence, fraud, or other unjuſt and diſhoneſt means, or from the property, after being ſo acquired by any other perſon, not having been ſubſequently held by the preſent occupant, and his predeceſſors, under a juſt and honeſt title, during the preſcribed period of twelve years; the plaintiff ſhall ſet forth the ſame diſtinctly, either in his petition of plaint, or in his replication. The court, after taking the anſwer and rejoinder of the defendant, ſhall, if the alleged unjuſt and diſhoneſt acquiſition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his juſt and honeſt acquiſition of the property claimed; or the juſt and honeſt poſſeſſion thereof by himſelf and his predeceſſors, during more than twelve years; after which, the court ſhall determine whether the ſuit in queſtion be cognizable under the preſent rule, or otherwiſe; and if ſuch determination be in favor of the plaintiff; or in appealed caſes, if a determination for the cognizance of the ſuit be paſſed by the court of appeal; the merits of the plaintiff's claim of right ſhall be heard, tried, and determined, notwithſtanding the lapſe of time, in like manner as

as if the claim had been regularly preferred within twelve years after the origin of the cauſe of action."

Clauſe third.

" PROVIDED, that nothing in the preceding clauſe, or in any part of the exiſting regulations, ſhall be held to authorize the cognizance of any ſuit whatever, in any court of juſtice, if the cauſe of action ſhall have ariſen ſixty years before the inſtitution of ſuch ſuit. Nor ſhall any plea on the part of the plaintiff, for the nonproſecution of his claim of right during a period of ſixty years, after the origin of his alleged cauſe of action, nor any original defect of title on the part of the poſſeſſor of the property claimed, after the elapſe of ſuch period, be deemed a ſufficient ground for taking judicial cognizance of any ſuit ſo preferred. Moreover, although the property claimed may have been acquired by an inſufficient title within the period of ſixty years, hereby fixed as the utmoſt limit for the cognizance of any claims in the eſtabliſhed courts of juſtice; if the property ſo acquired ſhall have deſcended by inheritance to the perſon in poſſeſſion when the claim thereto may be preferred, after an elapſe of twelve years; or if ſuch perſon ſhall have obtained juſt and honeſt poſſeſſion thereof by purchaſe, fair donation, or by any other title believed to be juſt and valid, and not appearing to be in any reſpect colluſive, for the purpoſe of depriving the plaintiff of his right; and either ſuch occupant himſelf, or any other perſon in his behalf, or from whom the property may have been obtained under any of the titles aforeſaid, or the whole in ſucceſſion, ſhall have held quiet and unmoleſted poſſeſſion, under a title believed to be juſt and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent court; the proviſions made by the foregoing clauſes ſhall not be conſidered applicable to any private claims to property ſo circumſtanced; which are therefore to be deemed inadmiſſible, as heretofore, after twelve years from the origin of the cauſe

of

of action, unleſs the ſame be cognizable under the exceptions and proviſions already in force."

Clauſe fourth.

"PROVIDED further, that no length of time ſhall be conſidered to eſtabliſh a preſcriptive right of property, or to bar the cognizance of a ſuit for the recovery of property, in caſes of mortgage, or depoſit, wherein the occupant of the land or other property may have acquired, or held, poſſeſſion thereof as mortgagee, or depoſitary only, without any proprietary right; nor in any other caſe whatever wherein the poſſeſſion of the actual occupant, or of thoſe from whom his occupancy may have been derived, ſhall not have been under a title *bonâ fide* believed to have conveyed a right of property to the poſſeſſor."

Limitation of time in ſummary caſes.

THE further proviſions contained in the ſame regulation, whereby a limitation of time is fixed for the delivery of applications to the courts of juſtice, to obtain the ſummary inquiry and proceſs authorized in caſes of arrears of rent; and of forcible diſpoſſeſſion from land, crops, or other property; will be hereafter noticed, with the ſpecial rules and proceſs to which ſuch proviſions refer. It has been already obſerved that all complaints for penal damages, (defined to comprehend all ſuits for pecuniary penalties demandable by individuals, on account of any act or omiſſion, in oppoſition to the laws and regulations, excluſive of a compenſation for actual loſſes;) for the recovery of which by judicial proceſs no ſpecific period may have been fixed; are required to be preferred within one year. The ſame period is fixed for preferring "all ſuits, complaints, and informations, cognizable by the civil courts, for the recovery of any fine, or penalty, receivable by government, or by the informer, on account of the unlicenſed manufacture or ſale of intoxicating liquors or drugs; the illicit manufacture or ſale of ſalt or opium; the fraudulent evaſion of the ſtamp duties preſcribed by the regulations; or on account

And for the recovery of penal damages, fines, and penalties.

count of any other fines, or penalties, recoverable, either by a regular ſuit, or by ſummary proceſs, in the courts of dewanny adawlut, under any regulation in force, which may not have fixed a ſpecific period for the recovery thereof." And no ſuch ſuit is to be admitted after the preſcribed time, unleſs proſecuted on the part of government, and ſufficient cauſe be aſſigned why it was not brought forward within one year after the commiſſion of the act upon which the fine or penalty is demandable.

Rules for receiving, trying, and deciding, ſuits cognizable in the zillah and city courts.

In ſtating conciſely the principal rules enacted, "for receiving "trying, and deciding, ſuits or complaints" declared cognizable in the zillah and city courts, it is neceſſary to premiſe, that theſe relate to the general courſe of proceeding in regular ſuits, for which a ſummary or other ſpecial proceſs has not been preſcribed. It may alſo be previouſly remarked that the judges of the zillah and city courts, in common with the provincial courts and ſudder dewanny adawlut, are "prohibited "correſponding by letter with parties in ſuits, proceſs, or mat- "ters, depending before them; or coming within their cogni- "zance. If a party in a ſuit, or any perſon amenable to the "juriſdiction of the court, ſhall have any matter to repreſent to "the court; he is either to appear in the court in perſon and "repreſent the matter in writing, or make the repreſentation in "writing through an authorized vakeel (pleader). The court "is to paſs whatever order, upon the repreſentation, may ap- "pear to it proper, conſiſtently with the regulations; and to "direct a copy of the order to be delivered to the perſon mak- "ing the repreſentation, or to his vakeel, under the ſeal of the "court, and atteſted by the regiſter." It is further provided, for all the civil courts, that in caſes within their juriſdiction, for which no ſpecific rule may exiſt, they "are to act according to "juſtice, equity, and good conſcience."

Chiefly applicable to regular ſuits.

R. III, 1793. § XIX.

R. II, 1803. § XX.

Prohibition of correſpondence with parties.

Repreſentations to the court, in what manner to be made.

Court to paſs an order and deliver a copy of it.

R. III, 1793. § XXI. R. II, 1803. § XVII.

General proviſion, where no ſpecific rule exiſts.

The firſt rule for receiving ſuits in the zillah and city courts

R. IV, 1793. § II, excluded

is,

to Benares by R. VIII, 1795.

is, that " no complaint be received, but from the plaintiff; " nor any anſwer to a complaint, but from the defendant; or " their reſpective vakeels duly empowered. Nor is any per- " ſon to be permitted to do any act, or to be heard, *vivâ voce*, " in any ſtage of a cauſe, excepting the plaintiff or defendant, " or their vakeels or witneſſes." The regulations for the appointment and control of vakeels, or native pleaders, in the civil courts, will be ſubſequently mentioned. And it will be ſufficient to remark on the rule cited, (which is common to all the civil courts), that the terms of it ſhould remove a doubt entertained, whether any *vivâ voce* argument, or motion, be allowable; although it is equally clear, from Section XIX, Regulation III, 1793, already quoted, and Section V, Regulation IV, 1793, hereafter noticed, that all regular pleadings in depending cauſes, as well as generally all repreſentations to the court for orders, are required to be in writing.

Rule for receiving plaint and pleadings.

Whether any *vivâ voce* argument, or motion be allowable.

R. IV, 1793, § III.

R. III, 1803. § III.

It is next directed, that " every complaint, which may " be preſented to the court, ſhall ſtate preciſely the matter or " complaint;" and that, if for land, it ſhall ſpecify the eſtimated amount of its annual produce, viz. the ſum payable by the under-tenants on account of the year in which the claim may be preferred; or, as more accurately defined in Section VIII, Regulation I, 1801; " the neat annual rent or other neat produce receivable by the proprietor, after deducting from the groſs rent, or other groſs produce, the actual expence of collection, and other uſual charges of management;" or if the plaint be for a houſe, or other real property, not being land, either malgoozary (paying revenue to Government) or lakheraj (exempted from the public revenue;) or for any other deſcription of property; or relating to marriage or caſt; or for damages on account of any injury; it is to ſtate, " according " to the neareſt eſtimate, the exact ſum of money; or the " amount in which the plaintiff may be endamaged." It is alſo to ſpecify the name of the perſon complained againſt;

What the plaint is to contain.

and

and the time when the cauſe of action aroſe. It may be written, in common with all other pleadings, in the Perſian, Hindooſtance, or Bengal language, at the option of the parties, in the provinces of Bengal and Oriſſa; and in the Perſian, or Hindooſtance language, in Bahar, Benares, and the ceded provinces. But every plaint is to be ſigned by the complainant, or his authorized vakeel; and is to be ſigned, numbered, and dated, in the order in which it may be received, by the judge; as well as regiſtered in a book, to be kept for this purpoſe by a native officer of the court.

And in what language to be written.

To be ſigned, numbered, dated, and regiſtered.

UPON a complaint being preferred, conformably with the preceding rules, to the proper zillah or city court, on account of any matter cognizable by it; and upon tender of the inſtitution fee, with ſecurity for the pleader's fee if a vakeel be employed; (or proof of inability, as more fully ſtated in the ſequel); the court is to iſſue a ſummons on the defendant*, containing a ſhort account of the demand, and requiring the defendant to accompany the officer deputed to ſerve the ſummons, or to deliver to him good and ſufficient ſecurity to appear in perſon, or by vakeel, and anſwer to the complaint on a day appointed. The form of the ſecurity bond, to be executed by the ſureties for the appearance of defendants, is preſcribed in Section III, Regulation XI, 1797; (re-enacted for the ceded provinces by Section XXIX, Regulation III, 1803); and for the relief of defendants, in caſes of undue or exaggerated demands, by Section II, Regulation III, 1802, (correſponding with Section VIII, Regulation XIV, 1803, for the

R. IV, 1793. § V.
R. III, 1803. § V.

Summons to be iſſued on defendants.

Security to be required from defendants.

R. XI, 1797. § III.
R. III, 1803. § XXIX.

R. III, 1802. § II.
R. XIV, 1803. § VIII.

* Or defendants, provided they have a joint intereſt in the matter at iſſue in the cauſe; or are jointly anſwerable for the plaintiff's claim. But it has been ruled by the court of ſudder dewanny adawlut, in more than one inſtance, that a ſuit againſt ſeveral defendants, who were not jointly bound to the plaintiff, nor had any joint intereſt in the cauſe, ſhould not have been received and tried, as a collective ſuit; and may be diſmiſſed, as irregularly inſtituted, leaving the plaintiff to prefer a ſeparate claim againſt each perſon, not jointly concerned with others. The plaintiff however may be allowed to rectify his plaint, when erroneouſly preferred, in ſuch caſes, if it has not been proceeded upon; and it is the duty of the judge to reject, in the firſt inſtance, any complaint which may not be preferred in conformity with the regulations.

ceded

ceded provinces), the judge is authorized to fix the extent of the ſecurity to be required for the appearance of the defendant, in the firſt inſtance; with directions, whatever may be the claim of the plaintiff, to demand from the defendant ſuch ſecurity only as may appear neceſſary to ſecure his appearance during the trial of the ſuit. But if, at any time in the courſe of the trial, the ſecurity ſo taken ſhall appear to the judge inſufficient, he is authorized, and required, to take ſuch further ſecurity as he may think neceſſary, to ſecure the defendant's appearance until a final judgment be paſſed on the caſe.

R. IV, 1793. § V.

R. III, 1803. § V.

THE ſummons on the defendant is to be ſerved upon him by the nazir of the court, or his inferior officer, who, in the event of the defendant's being found, and his not giving the required ſecurity, is to take his perſon into cuſtody, and bring him before the court; which is empowered to commit him to cloſe cuſtody until he ſhall have given the requiſite ſecurity, or performed the decree which may be paſſed upon the complaint againſt him. If a defendant, againſt whom a ſummons may iſſue, ſhall abſcond, or is not after diligent ſearch to be found, or ſhut himſelf up in any houſe or building, or retire to any place, ſo that the proceſs cannot be ſerved upon him, the judge, on receiving the nazir's return to this effect, is to iſſue a proclamation, in the country languages, containing a copy of the ſummons, and a notice, that if the party ſhall not appear on a day to be fixed (not leſs than fifteen days from the time of publication) the court will proceed to try and determine the cauſe without the appearance or anſwer of the defendant. This proclamation is to be fixed up in ſome conſpicuous part of the court-room, as well as on the outer door of the defendant's uſual dwelling houſe, or in ſome public ſituation at his uſual place of reſidence; and "if the defendant, "ſhall not appear at the time limited in the notice; or if a "defendant who may have been ſerved with a ſummons ſhall "not appear; or if, having appeared, he ſhall refuſe to make "anſwer,

Defendants receiving the ſummons, and not giving the ſecurity required, how to be proceeded againſt.

R. IV, 1793. § XI.

R. III, 1803. § XIII.

Proceſs againſt defendants upon whom the ſummons cannot be ſerved.

In what caſes the ſuit may be tried *ex parte*.

" anſwer, or make other default, or admit the truth of the " plaintiff's bill of complaint; the court, on examining the al- " legations of the plaintiff only, and the depoſitions of his " witneſſes, is to decree and give judgment, in the ſame man- " ner as if the defendant had appeared, anſwered, and entered " into proof."

Summons and other proceſs, how to be iſſued when the defendant is a woman of rank, who cannot appear in open court.

R. IV, 1793. § XIII. R. III, 1803. § XV.

THE foregoing proceſs is not applicable however to any " caſe, in which the defendant ſhall be a Hindu or Mahome- " dan woman, of a rank or quality which, according to the " cuſtoms and uſages of the country, would render it impro- " per to compel her to appear in an open court of juſtice." In all ſuch caſes the judges are not to iſſue any compulſory proceſs; but a ſummons is to be directed to the nazir of the court; containing a ſhort account of the demand, with a notice that if the defendant ſhall not appear in perſon, or by vakeel, at the time ſpecified, or having ſo appeared ſhall not anſwer the complaint, or make other default, the court will proceed to try and determine the cauſe, as if ſhe had appeared and anſwered; and commanding him to deliver a copy of it to the dewan or ſome principal ſervant of the defendant. The nazir is to return the ſummons, on the day appointed for the appearance of the defendant, with an endorſement ſpecifying in what manner he has executed it, or the reaſon why it has not been executed. If the dewan, or other principal ſervant of the defendant, ſhall abſcond, or otherwiſe act ſo that the ſummons cannot be ſerved upon him, or ſhall not after diligent ſearch be found, the judge, upon proof on oath of the fact, is to proceed againſt the defendant by proclamation, in the ſame manner, and under the ſame penalty for non-appearance, or default, as directed againſt other defendants, upon whom the ſummons cannot be ſerved. Another deſcription of privileged defendants, upon whom a notice is to be ſerved, inſtead of a ſummons, under Section X, Regulation VIII. 1795, for the province of Benares, has been already mentioned. It

Remark on other deſcriptions of privileged defendants.. R. XXIX. 1793, § XX, &c.

may

R. XXXI, 1793, § X. R. IV, 1793, § III, &c. R. XXXVIII, 1803, § X.

may further be remarked, in this place, that ſpecial rules have been enacted for the ſervice of proceſs on perſons employed in the manufacture of ſalt, or as officers in the ſalt department, or in the proviſion of the Company's inveſtment; as well as in other ſpecial caſes, which will be noticed, for greater perſpicuity, with the parts of the regulations which have immediate reference to ſuch caſes.

R. IV, 1793, § V. R. III, 1803, § V. On defendant's appearance, a day to be fixed for his anſwer. R. IV, 1793, § IV. R. III, 1803, § IV.

If the defendant appear, either in perſon, or by vakeel, the court is to fix a day for the delivery of his anſwer to the complaint; and if it appear reaſonable, may afterwards allow a further period for this purpoſe. That no doubt may be entertained, whether the cauſe of action, in ſuits decided by the zillah and city courts, be ſuch as to render them appealable to the ſuperior courts of appeal, the defendant, if he have any objections to the plaintiff's ſtatement of the cauſe of action, is required to inſert them in his anſwer; and the judge is thereupon to make ſuch inquiries, as he may deem neceſſary, to aſcertain whether the cauſe of action be ſuch as to render the cauſe appealable or otherwiſe. If the defendant's anſwer offer no objections on this point, the plaintiff's ſtatement of the cauſe of action is to be held correct, ſo far as to determine eventually whether the ſuit be, or be not, appealable, according to the preſcribed limitations.

Any objections to plaintiff's ſtatement of the cauſe of action to be inſerted in the anſwer. And judge to make any neceſſary inquiry thereupon.

R. IV, 1793, § V. R. III, 1803, § V.

When the defendant ſhall have delivered his anſwer to the complaint, the plaintiff is to reply to it on the next court day. He is not to introduce in his reply any matter not contained in his complaint; but is either to acknowledge the anſwer of the defendant to be true; or ſimply and ſhortly deny the truth of ſuch of the facts ſtated in it as he intends to diſpute; or of all the facts therein ſtated; or the competency of the anſwer. The defendant, whoſe rejoinder is to be delivered on the ſame day with the reply, (or, as uſually allowed, on the ſucceeding court day,) is in like manner reſtricted from introducing

Reply, when to be delivered; and what to contain.

Rejoinder.

ducing in it any matter not contained in his anſwer; and is required ſimply to deny the truth of the reply, or of the parts of it which he means to diſpute; and to aver the truth or competency of his own anſwer. No further pleadings are admiſſible; unleſs from miſtake, inadvertence, or other cauſe, the plaintiff ſhall have omitted to inſert in his complaint any thing material to the ſuit; or the defendant ſhall have omitted to inſert in his anſwer any thing material to his defence; in either of which caſes, on the omiſſion being repreſented to the court, the plaintiff is to be allowed to prefer a ſupplemental complaint, or the defendant to deliver a ſupplemental anſwer; and both parties may reply and rejoin to ſuch ſupplementary pleadings, in the ſame manner as to the original plaint and anſwer. But no more than one ſupplementary complaint, or anſwer, is receivable; and whenever a defendant ſhall refuſe, or neglect, to rejoin at the time appointed; the regiſter of the court is to enter a rejoinder for him.

In what caſes ſupplementary pleadings may be admitted.

Reſtriction.

The regiſter to rejoin for defendant in caſes of refuſal or neglect.

When the rejoinder has been filed, the court, either immediately, or on a fixed day, (of which eight days notice to be given) is to examine the truth of the complaint, by the oaths of the parties if they mutually conſent to that mode of examination, and of the witneſſes who may be produced by them, if they have any. To procure the attendance of witneſſes, within the juriſdiction of the court, a ſummons is to be iſſued, in the mode preſcribed by Section VI, Regulation IV, 1793 (and Section VII, Regulation III, 1803, for the ceded provinces); or if the witneſs be a Hindoo or Mahomedan woman, of rank and quality, which, according to the cuſtoms of the country, would render it improper to compel her appearance in a court of juſtice, a commiſſion of three creditable woman, ſworn to the faithful execution of their truſt, is to examine the witneſs on written interrogatories to be delivered by the parties. The regulations abovementioned, with ſome additional proviſions in Regulation L, 1803 (re-enacted for the ceded

R. IV, 1793. § VI.
R. III, 1803. § VI and VII.

Court, how to proceed, when the rejoinder has been filed.

Summons to be iſſued for the attendance of witneſſes.

Or commiſſion to examine women of rank.

R. L. 1803. § II and V.

R. VIII, 1809. § XXV.

Oath to be administered to witnesses and parties consenting to be examined on oath.

ceded provinces in Section XXV, Regulation VIII, 1809) also provide for administering to witnesses, as well as to parties consenting to be examined on oath, such oaths as may be considered most binding on their consciences, according to their respective religious persuasions; and for admitting a solemn declaration, instead of an oath, when the witness may be of rank or cast, which according to the prejudices of the country would render it improper to compel him, or her, to take an oath.

Penalty for non attendance, or other default, of witnesses duly summoned.

The same regulations authorize the apprehension, fine, and imprisonment, of witnesses duly summoned, who shall not attend; or attending, shall refuse to give evidence, or to subscribe their depositions; providing likewise for their re-imbursement,

Provision for re-imbursement of expence incurred by their attendance,

by the party at whose requisition they may be summoned, for any reasonable expences incurred by their attendance; without payment of which, or securing it to the satisfaction of the court, the party summoning a witness is not only liable to lose the benefit of his testimony; but to be confined, after a decision upon the cause, until he shall discharge the sum awarded to the witness. If the personal attendance of a party, or witness, (not being a woman of rank) resident without the

Attendance of witnesses, or parties, resident without the court's jurisdiction, how to be procured.

jurisdiction of the court in which the cause is depending, be deemed indispensably necessary by the judge trying the cause, he is to address the judge of the jurisdiction in which such party or witness may reside, requesting him to order their attendance. But when personal attendance is not requisite,

Or evidence of such witnesses, residing at a distance of more than fifty Cos, how to be obtained.

and the witness shall reside out of the jurisdiction of the court in which the suit may be instituted, at a greater distance from it than fifty cos, (a hundred miles,) the judge is authorized to apply by letter, for the examination of the witness by the judge of the jurisdiction in which he may reside, upon written interrogatories to be delivered by the parties for that purpose. By Section XXI, Regulation XLIX, 1803, the judges of the zillah and city courts are authorized to employ their regis-

R. XLIX, 1803, § XXI. Judges authorized to employ their registers, assistants, and principal native

ters and assistants, or any of their principal native officers, in taking down the depositions of witnesses, whom they may

not

not have time to examine *viva voce* themſelves. But the depoſition of every witneſs, who may appear in court, is to be taken in open court, in the preſence of the parties, or their authorized pleaders; and is to be reduced into writing in the Perſian, Hindooſtanee, or Bengal language, as the witneſs may deſire. The depoſition is to be ſubſcribed by the witneſs with his name, or mark; and, if not taken before the judge in perſon, is to be alſo atteſted by the parties, or their pleaders, in teſtimony of their having been preſent. It is further provided, that if any diſpute or queſtion ſhall ariſe in the courſe of taking the evidence of a witneſs ſo examined, the judge ſhall immediately, or as ſoon as practicable, hear and inquire into the ſame in the preſence of the witneſs, and of the parties or their pleaders; and ſhall paſs ſuch order thereupon as may appear to him proper. Every exhibit or written evidence is alſo to be produced in open court, at the trial; to be marked with ſome letter or number to identify it; and, if diſputed, is to be duly proved by examination of witneſſes. If the judge ſhall think it juſt and proper to reject any exhibit, or written evidence, offered in a depending cauſe, he is to endorſe upon it the word "rejected;" with the names of the parties, the date of rejection, and his reaſons for not admitting it; to ſubſcribe his name to the endorſement; and to return the document to the perſon who produced it.

officers, in taking the depoſitions of witneſſes.

Rule to be obſerved in all ſuch caſes; and whenever a witneſs may appear in court.

General rule concerning exhibits, or written evidence, produced in court.

When the parties have been heard by their pleadings, the witneſſes produced on both ſides examined, and the exhibits received have been duly conſidered, the judge is to give judgment, in conformity with the laws and regulations, according to juſtice and right; and is to order coſts to be paid to the party in whoſe favor the decree may be made; or in ſuch manner as it may appear equitable to award by the decree, on due conſideraton of all the circumſtances of the caſe.

R. IV, 1793, § VII and XXVI.
R. VII, 1793, § IX.
R. III, 1803, § IX, and XXVII.
R. X, 1803, § VIII.

Judgment to be given when the pleadings and evidence have been received and conſidered.

Costs and other particulars to be inſerted in the decree.

caſe.* The judges are enjoined to make it an invariable rule to inſert in their decrees all ſums paid, or payable, by the parties, on account of coſts and expences of the ſuit; and the parties are declared not liable to the payment of any other coſts or expences, excepting ſuch as may be inſerted in the decree. The judges are further directed to inſert in their decrees the names of the witneſſes whoſe depoſitions may have been taken; the title of every exhibit read in the cauſe; and the amount of the annual produce of the land, or the ſum of money, or value of other property adjuged†. The decree is to be ſealed with the ſeal of the court, ſigned by the judge, and dated on the day when it may be paſſed.

Copies of decrees to be delivered, or tendered, to the parties, or their vakeels.

The judge or the regiſter, either at the time of making the decree, or within ten days afterwards, is to deliver, or tender, in open court, to each party, or their vakeels, an authenticated copy of the decree; with an endorſement of the date of delivery, or tender; which is alſo to be inſerted in the records of the court; with the cauſe of non-delivery, if the parties, or their vakeels, ſhall not attend to receive the copies of the decrees prepared for them, when tendered as directed.

Entry to be made on the records if they ſhall not attend to receive ſuch copies.

Theſe proviſions have reference to an appeal from the deciſion of the zillah or city court to the provincial court of appeal.

When, and in what manner, the judge is to proceed, in execution of his decree.

But if the cauſe be not appealable under the preſcribed limitations, or if no appeal be preferred, the judge

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* The general rule, deducible from the regulations cited, is in ſubſtance, that the coſts ſhall follow the judgment on the claim; viz. if the whole of the plaintiff's claim be eſtabliſhed, he ſhall recover all his coſts from the defendant: if his claim be altogether diſmiſſed, he ſhall pay the full coſts of the defendant. If the plaintiff's claim be partly proved, and partly diſmiſſed from want of proof, the defendant ſhall pay his own coſts and thoſe of the plaintiff on the part proved; and the plaintiff ſhall pay his own coſts and thoſe of the defendant on the part diſmiſſed. This alſo appears to be the moſt equitable principle for general obſervance, as well as the moſt likely to prevent litigiouſneſs. But particular caſes ſometimes occur, in which it would be unjuſt to make either party pay the other's charges; and in ſuch caſes it cannot be meant by the regulations to preclude a judgment, that each party ſhall bear his own coſts.

† By a circular order from the ſudder dewanny adawlut, under date the 27th April 1796, if any objection ſhall have been made by the defendant to the plaintiff's ſtatement of the cauſe of action; the determination paſſed thereupon, declaring the aſcertained produce, amount, or value, of the property in litigation, is alſo to be ſtated in the decree; for the purpoſe of ſhewing whether the cauſe be appealable or otherwiſe.

by whom the decree has been paſſed, is to proceed to the execution of it, by cauſing poſſeſſion to be delivered, if the decree be for a zemindary, talook, or other landed property; or if it be for perſonal property, or a ſum of money, by cauſing the ſpecific thing to be delivered; or the value of it, or the ſum of money decreed, to be levied by the public ſale of the whole, or a ſufficient portion, of any property, real or perſonal, belonging to the party againſt whom the judgment may have been given; or by the attachment of his perſon; or if neceſſary, both by a ſale of property, and perſonal attachment.*

R. IV, 1793, § VIII. R. III, 1803, § X. Allowance to be made by plaintiffs for ſubſiſtence of defendants, when confined at their inſtance.

If the defendant be committed to cloſe cuſtody, at the inſtance of the plaintiff, either whilſt the ſuit is depending, or after the decree ſhall have been paſſed, the judge, at the time of committing the defendant, is to make an order on the plaintiff for the payment of ſuch monthly allowance, as he may think reaſonable, for the ſubſiſtence of the defendant, not exceeding four annas, nor being leſs than one anna per

* The application of parties for enforcement of decrees is not requiſite, as the original plaint is underſtood to imply the plaintiff's deſire of recovery by judicial proceſs, unleſs intimation be given by him to the contrary. This point was diſcuſſed between the Calcutta provincial court, and the judge of zillah Jeſſore, in the year 1797; and the court of ſudder dewanny adawlut, after conſidering the correſpondence which took place on the ſubject, paſſed the following reſolution on the 8th November of that year. "The court, on conſideration of the foregoing correſpondence between the Calcutta provincial court and the judge of zillah Jeſſore, concur in the conſtruction given by the former to the exiſting regulations, reſpecting the enforcement of decrees, viz. that according to Section VII, of Regulation IV, 1793, the zillah judge, after paſſing a final judgment, ſhould proceed to carry the ſame into execution, in the manner directed in the above ſection, without waiting an application for this purpoſe from the plaintiff; whoſe original plaint for the recovery of the property decreed is in ſuch caſes ſtill before the court; and, with his ſubſequent pleadings, muſt be underſtood to imply his deſire of recovery by judicial proceſs, unleſs any intimation be given by him to the contrary; in which caſe the court receiving the ſame would of courſe ſuſpend the execution of proceſs in his behalf." It has alſo been determined by the ſudder dewanny adawlut (on the 9th Auguſt 1797) that a petition to enforce a decree, preſented after an interval of ſeveral years from the time of its being paſſed, does not ſubject the petitioner to the inſtitution fee, as on a new ſuit;" the proceſs in ſuch caſe being not to try the merits of the cauſe, but to "determine on the enforcement of the decree, after hearing the objections of the party againſt "whom it is deſired to be enforced." It was added however, that, if the petition for enforcement include a claim upon any perſon who was not a party in the cauſe decreed; "ſuch "claim muſt be proſecuted as a new ſuit, liable of courſe to the eſtabliſhed inſtitution fee."

diem.

diem. The payment is to be made monthly, in advance*, to the nazir of the court; and the firſt payment immediately upon the confinement of the defendant. If the plaintiff ſhall neglect or refuſe to pay the preſcribed allowance, for one month after it may become due; the judge, upon the nazir's report to this effect, is to notify, by a written publication, to be fixed up in ſome conſpicuous part of the court room, that if the plaintiff ſhall not, within a month after the date of the notice, pay the ſum in arrear, with the allowance for one month in advance, the court will releaſe the defendant: and he is to be diſcharged accordingly, if the plaintiff ſhall not make the payments required by ſuch notice. This rule is not applicable to defendants who may be committed to cuſtody for diſobedience to an order of the court; the allowance to them being paid by government. But the ſpirit of it muſt be conſidered to include plaintiffs, whoſe claims may be diſmiſſed, with coſts; and who may be confined for the recovery of the latter, at the inſtance of the defendants intitled thereto.†

Judge, how to proceed, in caſe of neglect or refuſal.

This rule not applicable to defendants confined for diſobedience.

But the ſpirit of it includes plaintiffs confined at the inſtance of defendants.

When portions of eſtates are ordered to be ſold in ſatisfaction of decrees of the courts of judicature, it is neceſſary, for the ſecurity of the public revenue, that a diſtribution of the aſſeſſment upon the entire eſtate be adjuſted for the portion brought to ſale; agreeably to the principles declared in Section X, Regulation I, 1793. The board of revenue, and the collectors, being in poſſeſſion of the accounts required for the adjuſtment of the aſſeſſment in ſuch caſes; and moreover, as ſuperintending the details of the attachment and ſale of land, would occupy much of the time of the courts, and often

R. XLV, 1793. R. XX, 1795. R. V, and XII, 1796. R. VII, 1799. R. I, 1801. R. XXVI, 1803. Sales of land in execution of judicial proceſs how to be made.

* This is the evident intention of the rules referred to; though, from a verbal inaccuracy, it has been doubted whether the ſecond monthly payment be demandable at the expiration of the firſt, or of the ſecond, month.

† In caſes before the ſudder dewanny adawlut on the 4th January 1798, and 28th February 1799, that court alſo conſidered Section VIII, Regulation IV, 1793, applicable to plaintiffs admitted to ſue as paupers; when the defendants ſued by them may be confined at their inſtance; the regulations not containing any exception, with reſpect to paupers, on this point.

occaſion

occaſion delay in the enforcement of decrees; it is provided, by the Regulations noted in the margin, that all ſales of land, in execution of judicial proceſs, ſhall be made by the board of revenue at the preſidency; or under their orders, by the collector of the zillah in which the lands are ſituated. For this purpoſe, it is directed that whenever there may be occaſion to have recourſe to a ſale of lands, in ſatisfaction of a decree, the court by which the decree is to be enforced, ſhall tranſmit a copy and tranſlation of it, without any other part of the proceedings, to the board of revenue; who are to proceed with all practicable diſpatch to diſpoſe of ſuch portion of the lands of the party againſt whom the decree is given, as may be ſufficient to make good the amount of it. The court by which the decree is paſſed, or to which the enforcement of it is committed, may however, at any time before the actual ſale, countermand or poſtpone it, upon ſufficient cauſe, by a precept to the collector by whom the lands may have been ordered to be ſold; or by an addreſs to the board of revenue, if the ſale ſhall have been directed to take place at the preſidency.

A copy and tranſlation of the decree to be tranſmitted to the board of revenue; to be enforced by them, or under their orders, by the collector of the diſtrict, in which the lands are ſituated.

By whom the ſale may be countermanded, or poſtponed, in ſuch caſes.

THE judges of the zillah and city courts are further required to tranſmit to the collectors, and board of revenue, copies of all decrees which may be paſſed by them, or which may be ſent to them for enforcement, affecting the proprietary right to, or poſſeſſion of, any lands paying revenue to government, or held exempt from the payment of revenue; for the purpoſe of making the requiſite entries and alterations in the periodical public regiſters of land. And in all ſuits wherein government may be one of the parties, the court paſſing a judgment, whether for or againſt government, is directed, by a late regulation, to tranſmit a copy and tranſlation of the decree, as ſoon as the ſame can be prepared, to the ſecretary in the judicial department; for the information of the Governor General in Council.

R. IV, 1793 § IX.
R. VIII, 1795, § IV.
R. LVIII, 1795. § III, and IV.
R III, 1803, § XI.
R. XXXI, 1803, § XL.
R. XXXVI, 1803, § XLIII.
Copies of all decrees affecting lands, to be ſent to board of revenue and collectors.
R. II, 1805, § IX.

And in public ſuits to Governor General in Council.

In addition to the foregoing general rules for the guidance of the zillah and city courts, in receiving, trying, and deciding the ſuits cognizable by them, and in carrying into execution the deciſions paſſed by them, many ſubſidiary rules have been preſcribed; of which the moſt important is that for preſerving to the natives their own laws and uſages, in certain caſes; as already quoted from the judicial plan of 1772, and continued in the exiſting regulations, in the following terms: "In ſuits "regarding ſucceſſion, inheritance, marriage, and caſt, and all "religious uſages and inſtitutions, the Mahomedan laws with "reſpect to Mahomedans, and the Hindoo laws with regard "to Hindoos, are to be conſidered the general rules by which "the judges are to form their deciſions." In Section III, Regulation, VIII, 1795, for the province of Benares, it is added, that "in caſes in which the plaintiff ſhall be of a different "religious perſuaſion from the defendant, the deciſion is to be "regulated by the law of the religion of the latter; excepting "where Europeans, or other perſons not being either Maho-"medans or Hindoos, ſhall be defendants; in which caſes the "law of the plaintiff is to be made the rule of deciſion in all "plaints and actions of a civil nature." The Mahomedan and Hindoo law officers, attached to the ſeveral civil courts, are required to expound the law of their reſpective perſuaſions; and the judges are directed to be guided by their expoſition, in all caſes wherein they may have no reaſon to doubt the accuracy of it; but if, in any caſe, they entertain ſuch doubt, either from objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cauſe, if the court trying the ſuit conſider the expoſition given by it's immediate law officer inſufficient; it is declared at liberty to obtain a further expoſition from the law officers of the ſuperior courts by a reference of the caſe to them, through the judges of thoſe courts. But no point of law is to be referred to individuals not acting in a public capacity; and to whom conſequently

Rule for preſerving to the natives their own laws and uſages, in ſuits regarding ſucceſſion, inheritance, marriage, caſt, and all religious inſtitutions.
R. IV, 1793. § XV.
R. VIII, 1795. § III.
R. II, 1798. § IV.
R. III, 1803. § XVI.

By whom the Mahomedan and Hindoo laws are to be expounded.

conſequently no reſponſibility attaches; although law opinions, quoting or referring to authorities, may be received from parties, in ſupport of their claims; and, if it be deemed proper by the courts receiving them, referred to their law officers or to thoſe of the ſuperior courts. Upon the wiſe, juſt, and humane principle, which dictated theſe proviſions, it will be ſufficient to obſerve, that the tranſlations of books of law, Hindoo and Mahomedan, made under the encouragement of the Britiſh government, have materially contributed to give effect to it, by enabling the judges of the civil courts to inform themſelves upon general points of Mahomedan and Hindoo law, and to inveſtigate the expoſitions of the native law officers attached to their reſpective courts. This ſalutary examination and control, it may be expected, will become ſtill more efficient, under the means now afforded by the College of Fort William, to ſtudy the Shanſcrit and Arabic languages, and to obtain a more perfect knowledge of the laws from original authorities*.

Tranſlations of books of law have contributed to give effect to theſe proviſions.

And further means of controlling the law officers may be expected from the ſtudies of the College of Fort William.

A FURTHER proviſion, that "the zillah and city courts are "not to paſs a decree in any ſuit concerning the ſucceſſion or "right of inheritance to a zemindary, talook, land, houſe, "or other real property, to which there are more claimants "than one, who, by the Hindoo or Mahomedan law (reſpect "being had to the religion of the claimants) would be entitled "to a portion of the property; excepting the property be, "by the decree, adjudged to all the claimants, in the propor-"tions to which they may be reſpectively intitled;" is rather a particular application of the preceding general rule, than a new rule; but, with a view to give it the fulleſt effect, the term "claimants" is conſtrued to include all perſons legally intitled to claim a ſhare of the property in diſpute, as well as the actual claimants in the cauſe before the court; and previ-

R. III, 1793, § XIII. R. II, 1803, § XIX. Application of preceding rules directed, in ſuits concerning the ſucceſſion, or right of inheritance, to landed property.

* Foreign laws and cuſtoms, not being Hindoo or Mahomedan, are aſcertainable, as in England, by evidence: and the advocate general recommended this mode of aſcertaining them in a caſe referred for his opinion, by the ſudder dewanny adawlut, in February 1799.

ouſly

ouſly to giving judgment in the ſuits deſcribed, it is uſual to iſſue a proclamation, requiring all perſons, intitled to any portion of the litigated property, to notify their right and claim thereto, within a limited period; that the ſame may be included in the court's decree; or their right, if diſputed, reſerved for inveſtigation by a ſeparate ſuit. It may be uſeful to add, that on a reference to the ſudder dewanny adawlut in the year 1798, the court were of opinion that the ſpirit of the rule, for obſerving the Mahomedan and Hindoo laws, was applicable to caſes of ſlavery; though not included in the letter of it; and this conſtruction was confirmed by the Governor General in Council, under date the 12th April 1798 *. It is obſervable, that the rule in queſtion is not ſo extenſive as the act of parliament, which defines the juriſdiction of the ſupreme court over the native inhabitants of Calcutta, with reſpect to "all matters of contract and dealing between party "and party;" and conſidering the very comprehenſive nature of this general head of law, it might be productive of much practical inconvenience, as well as delay of juſtice, if a reference to the law officers were required in every inſtance of contract or dealing, however inconſiderable. But in all caſes of an intricate or ſpecial nature, not expreſsly provided for by the Regulations, it is cuſtomary, and obviouſly according to the ſpirit and intention of the general rule above cited, that the matter in conteſt be determined by the law of the parties.

Proclamation uſual in ſuch caſes.

Spirit of the rule, for obſerving Mahomeden and Hindoo laws, declared applicable to caſes of ſlavery.

Remark on difference between this rule, and the act of Parliament, which defines the juriſdiction of the ſupreme court, over the native inhabitants of Calcutta. 21. Geo. III, cap. 70. § 17.

All caſes of an intricate or ſpecial nature, not expreſsly provided for by the regulations, within the intention of the general rule.

WHEN a reference to the law officers is deemed neceſſary, a ſtatement of the facts, on which the queſtion of law may ariſe, is to be made out in writing, ſigned by the judge of the court, and delivered to the law officer for his opinion; which he is to

R. IV, 1793. § XVI. R. III, 1803. § XVII.

In what manner opinion of law officers to be taken.

* For the Mahomedan and Hindoo laws of ſlavery, conſult the tranſlations of the *Hedaya* and Hindoo Digeſt. Alſo Sir W. JONES' verſions of *Menu*, and *Al Sirajiyyah*. Mr. HAMILTON's juſt obſervations on the fifth book of the *Hedaya* are nearly as applicable to Hindoo, as to Moſulman, bondage. Yet the yoke is degrading to human nature, and might be gradually looſened.

return

return on the ſame paper, or on a paper annexed to it, atteſted with his ſignature. The judges of the zillah and city courts are ſtrictly enjoined not to order, or allow, a report of any matters of fact, relating to a cauſe depending before them, with a view to paſs a decree thereupon, to be made to them by any officer of the court, or other perſon, excepting caſes in which ſpecial authority for that purpoſe may be given by the regulations. But in caſes of diſputed property, regarding lands, houſes, or boundaries, in which the court may deem a local inveſtigation proper, it is authorized to appoint an aumeen (commiſſioner), who is to be ſworn to make a faithful report of the matters he may be directed to inveſtigate, and whoſe written report, ſubſcribed with his name, is to be received as evidence in the cauſe, with regard to ſuch matters only. The allowance to the aumeen, as fixed by the court, and any neceſſary expence attending the execution of his commiſſion, are to be added to the coſts of ſuit, and paid by the perſon againſt whom the decree may be paſſed. It is however a general rule that the plaintiff (and the ſpirit of it is equally applicable to the defendant) ſhall, in the firſt inſtance, "pay the charges of all "proceſs attended with expence which may be iſſued in his "behalf previous to the deciſion of the ſuit".

No report of facts to be made by any officer of the court, or other perſon, except in caſes authorized.

R. IV, 1793, § XVII.
R. III, 1803, § XVIII.

A local inveſtigation may be ordered in certain caſes.

R. IV, 1793, § XVIII.
R. III, 1803, § XIX

General rule for payment of charges in the firſt inſtance.

In all ſuits for money, or perſonal property, the amount or value of which ſhall not exceed two hundred ſicca rupees, the courts are empowered, with the conſent of the parties, to refer the ſuit to an arbitrator, who may be either choſen by the parties or their vakeels, or appointed, with their conſent, by the court. And in ſuits concerning diſputed accounts, partnerſhips, debts, doubtful or conteſted bargains, or non-performance of contracts, in which the cauſe of action may exceed two hundred rupees, the court are to recommend to the parties to ſubmit the deciſion of the matters in diſpute to one or more arbitrators, of their own election. The judges are enjoined to afford every encouragement in their power to perſons

R. XVI, 1793, extended to Benares by R. XV, 1795.
R. XV, 1795
R. XXI, 1803.

What ſuits may be referred to an arbitrator, choſen by parties, or appointed by court.

And in what ſuits courts to recommend election of one or more arbitrators, by the parties.

What perſons eligible as arbitrators.

perſons of character and credit, to become arbitrators; but are not to employ any coerceive means for that purpoſe: nor to permit any of their public officers, or private ſervants, to be arbitrators in a cauſe. Regulation XVI, 1793, (re-enacted for the ceded provinces by Regulation XXI, 1803) preſcribes the mode of proceeding to be obſerved when a ſuit is ſubmitted to arbitration; and provides that the final award be delivered to the court, under the ſeal and ſignature of the perſon, or perſons, by whom it may be made, together with all the proceedings, depoſitions and exhibits in the cauſe; that the court is to paſs a decree conformably with the award; to be carried into execution in the ſame manner as other decrees of court; and that the award is not to be ſet aſide, except it be fully proved to the ſatisfaction of the court, by the oaths of two credible witneſſes, that the arbitrators have been guilty of groſs corruption or partiality.

Mode of proceeding to be obſerved in caſes of arbitration; and proviſions for delivery and execution of award.

Award not to be ſet aſide, except for corruption, or partiality.

In all cauſes concerning demands, arrears, or exactions, of rent, and other matters heretofore cognizable in the revenue courts; between the landholders or farmers of land, and their under tenants; or between any other perſons concerned in the collection or payment of the land-rents; and in which neither the collectors, or their public officers or private ſervants, or government, may be parties; the courts are further empowered to refer to the collector of the diſtrict, for adjuſtment and report, any accounts which it may be neceſſary to adjuſt for the deciſion of the ſuit; and the judges are required to make ſuch reference in every cauſe, of the above deſcription, which neither themſelves or their regiſters may be able, from other avocations, to try and determine without delay; and which may not be cognizable by the native commiſſioners acting under them. A precept to the collector is to be iſſued in ſuch caſes, under the ſignature of the judge and ſeal of the court, ſpecifying the accounts and papers referred; and the time by which the report is to be made. The judge may, at the ſame time, command

R. VIII, 1793, § XIII, extended to Benares by R. LIV, 1795, R. VII, 1799, § XV. R. V, 1800, § XIV. R. XXVIII, 1803. § XXXII.

In what caſes the judges are empowered, and required, to refer accounts for adjuſtment to the collectors.

In what manner ſuch references are to be made.

mand the parties or their vakeels (being any perſons duly empowered to act for them) and their witneſſes, to attend the collector; and empower the latter to examine the witneſſes, as well as the parties if they agree to be ſo examined, upon oath. The collector is to ſubmit his report by the time limited, or aſſign his reaſons for not having been able to complete it, and the judge, upon the receipt of the collector's report, may either confirm, ſet aſide, or alter his adjuſtment of the accounts, or paſs ſuch deciſion reſpecting them as ſhall appear to him proper. The declared object of this proviſion is "to expedite the "adminiſtration of juſtice, by relieving the zillah and city "courts from the trouble of arranging and comparing long "and intricate accounts: the adjuſtment of which is frequently "neceſſary for the deciſion of ſuits between individuals reſ-"pecting land rents;" and it is much to be wiſhed that the great importance of this object, to the parties concerned, may induce more frequent references to the collectors in the caſes ſtated, than have hitherto taken place. It may alſo be hoped that the very uſeful aid, which the collectors have it in their power to afford, towards the due adminiſtration of juſtice, when ſuch caſes are referred to them, will induce their ready and zealous attention to all references which may be made to them, in purſuance of this part of the general regulations for their guidance.

Report to be made by the collector.

And deciſion to be paſſed thereupon by the judge.

Object and importance of this proviſion.

The cauſes depending in the zillah and city courts are to be brought on for trial according to the order in which they may be filed; excepting caſes in which it may be otherwiſe directed by any regulation; or in which the judge may think it proper, for ſpecial reaſons, which he is to ſtate at large upon the record of the trial, to bring on the cauſe before it's turn. "If the plaintiff at any time neglect to proceed in his ſuit for "ſix weeks, it is to be diſmiſſed, unleſs he can ſhew good and "ſufficient cauſe for not having proceeded in it; and the court "is to award to the defendant the whole or any part of the "coſts incurred by him in the ſuit, as it may deem equitable."

R IV, 1793, § XIX.
R. III, 1803, § XX.
Order, in which cauſes are to be brought on for trial

R. IV, 1793, § X.
R. III, 1803, § XII.
Rule for nonſuits, in caſes of neglect for ſix weeks.

The

The judge is, at the ſame time, directed to record upon the proceedings, his reaſons at large for diſmiſſing the ſuit of the plaintiff, or allowing him to proſecute it after he ſhall have neglected to proceed in it for ſix weeks; and the zillah and city courts were informed by a circular notice from the ſudder dewanny adawlut, dated the 22d Auguſt 1795, that "the "plaintiffs in cauſes diſmiſſed under this rule have the option "of re-inſtating them under the regulations;" viz. by inſtituting a new ſuit in conformity with the general rules in force.

Explained by ſudder dewanny adawlut, as not precluding a new ſuit.

Further explanation of the neglect, to which the rule applies; and the mode of proceeding required, in the application of it.

The court, on the 5th October 1797, upon a reference from the judge of zillah Backergunge, further declared the meaning and intent of the above proviſion to be "that if a plain-"tiff ſhall neglect, for the term of ſix weeks, to perform any "act required from him in the regular proſecution of his ſuit, "he is to be nonſuited; but *before* the judgment of nonſuit is "paſſed againſt him, he is to be called upon to ſhew cauſe for "not having proceeded in it, and ſuch cauſe is to be admitted "to bar the nonſuit, if good and ſufficient; but not otherwiſe."

Reaſon for ſtating this explanation.

This explanation of a penal rule, which has been ſometimes miſapprehended, is here introduced, with a view to guard againſt it's erroneous application; to the ſerious injury of the parties affected by it, who, till lately, were liable in conſequence to all the expences of a ſecond ſuit; and are ſtill expoſed to expence and loſs of time in obtaining a reverſal of the nonſuit, by an appeal to the provincial court, under the proviſions contained in Section XI, Regulation II, 1805; and the former rules therein referred to.

R. IV, 1793, § XX.
R. VIII, 1795, § IV and IX.
R. III, 1803, § XXI.
R. XLIX, § XX.
In what languages proceſs of civil courts to be written or printed, and how to be iſſued.

ALL orders and proceſs of the civil courts, which may be directed to be ſerved, or executed, on any perſon, are to be written, or printed, in the Perſian and Bengal languages in the provinces of Bengal and Oriſſa, and in the Perſian and Hindooſtanee languages in Bahar, Benares, and the ceded provinces; to be ſealed with the ſeal of the court; and to be ſigned by the judge or regiſter. When proceſs is iſſued againſt any

perſon

perſon not preſent at the place where the court may ſit, and a peon, or peons *, may be required for ſerving, or executing it, each peon is to be paid by the party, in whoſe behalf it may be iſſued, four annas (in Benares two annas) per day, except in diſtricts where cuſtom may have fixed the ſubſiſtence money of peons at a lower rate; but no greater number than two are to be deputed to ſerve or execute any proceſs; and one only, unleſs in particular caſes two may appear neceſſary.

Allowance to peons, not on the public eſtabliſhment, who may be required to execute it.

If any zemindar, talookdar or other landholders, or a farmer of land holding his farm immediately from government, or any other perſon, ſhall reſiſt, or cauſe to be reſiſted, any proceſs, rule, order, or decree, of a zillah or city court; upon proof of ſuch reſiſtance, after the offender ſhall have been duly ſummoned to anſwer to the charge, and on non appearance proceeded againſt by proclamation, the court is empowered to decree the forfeiture of his zemindary, talook, or, other eſtate, in which the reſiſtance may have been made; or, if made out of the limits of the offender's eſtate, the forfeiture of any landed property he may poſſeſs within the juriſdiction of the court whoſe proceſs ſhall have been reſiſted: or, if the offender be a ſudder† farmer, that his leaſe be cancelled from the expiration of the current year: or if he be neither a landholder, or ſudder farmer, or although ſuch, if the judge of the court, whoſe proceſs may have been reſiſted, ſhall be of opinion that a fine to government is a more proper and adequate puniſhment for the offence, than a forfeiture of the offender's eſtate or farm, he is authorized to adjudge the payment of ſuch fine to government as may appear proper, upon a conſideration of the offender's ſituation and circumſtances, and the

R. IV, 1793, § XXII, to XXIV. R. VIII, 1795, § V, to VIII. R. IX. 1799. R. III, 1803, § XXIII, to XXVI. Penalties for reſiſtance to the proceſs of a zillah or city court, by a landholder, principal farmer or other perſon.

* More properly called *Piádahs*; being literally footmen; and correſponding with the beadles, apparitors, and meſſengers, of the Engliſh courts; but here meaning ſuch only as are employed without a fixed ſalary. Thoſe upon the public eſtabliſhments, who receive an allowance from Government, are denominated *Chupráſees*, or badge peons.

† Literally original, head, ſuperior; oppoſed to *Moſuſſil*, ſubdivided, ſubordinate, inferior. With reſpect to tenures, it is uſually applied to ſuch as are held *in capite*, or immediately from Government. *Sudr-o-Moſuſſil* alſo denote the town and country; or more commonly the capital and its dependencies.

offence

R. VII, 1799, § XXIV. Judgments given in ſuch caſes ſubject to the general proviſions for appeals. And if for the forfeiture of an eſtate or farm commutable to a fine, by the Governor General in Council.

offence of which he may be convicted; ſubject to the general proviſions for appeals from the judgments of the zillah and city courts*. But in all caſes wherein a final decree may be paſſed for the forfeiture of an eſtate, or farm, on account of reſiſtance of proceſs, a copy of the decree and of the proceedings held upon the caſe, is to be tranſmitted to the Governor General in Council; to whom is reſerved an option of either ordering the decree to be executed, or of commuting the forfeiture for ſuch fine as he may think adequate, and the decree of forfeiture is not to be carried into execution until notice be received of his confirmation of it.

R. XLIX, 1793. R. XIV, 1795. R. V, 1798, § VII. R. XXXII, 1803. R. II, 1805, § V, and XIII. Summary proceſs authorized in caſes of forcible diſpoſſeſſion from land, or other property, for immediate recovery of poſſeſſion.

RESERVING for the latter part of the preſent ſection the general regulations, which relate indiſcriminately to the whole of the civil courts, of appellate as well as of original juriſdiction; and for the ſucceeding parts of this analyſis the proviſions made for ſummary judicial proceſſes, in caſes of arrears of rent; as well as in certain caſes connected with the public revenue; it may be ſtated, in this place, that beſides the powers veſted in the zillah and city courts, for the trial and deciſion of regular ſuits, under the rules which have been ſpecified, they are empowered by Regulation XLIX, 1793, (extended to Benares by Regulation XIV, 1795; and re-enacted for the ceded provinces by Regulation XXXII, 1803); for the purpoſe of preventing affrays reſpecting diſputed boundaries, lands, crops, and other property; to take immediate cognizance of complaints of forcible diſpoſſeſſion from land or crops; (as well as from tanks, reſervoirs, wells, or water courſes in the province of Benares); and upon the previous poſſeſſion (or rather the violent diſpoſſeſſion) of the complainant being proved to their ſatisfaction, to cauſe the land, crops, or other property of which he may have been forcibly diſpoſſeſſed to be reſtored to him; or the value of

* The ſpecification of one thouſand, inſtead of five thouſand, rupees, as the ſtandard for appeals, in ſections XXIII, XXV, and XXVI, of Regulation III, 1803, is evidently an overſight. *Vide* R. IV, 1803, § XXIII, XXIV, XXVI. And R. VII, 1799, § XXIV.

the

the crops, if damaged, deſtroyed, or not forthcoming, to be paid to him: with coſts and damages; leaving the diſpoſſeſſor to prefer his claim to the property in diſpute by a regular ſuit in the dewanny adawlut; unleſs the diſpoſſeſſor, or any perſons accompanying him, in taking poſſeſſion by force of the diſputed property, ſhall kill, wound, or violently beat any perſon; in which caſe his right to the property in diſpute is to be adjudged forfeited to the complainant; or if both parties aſſemble armed men; the one to take, the other to keep, poſſeſſion of the diſputed property; and a fray enſue, in which any perſon may be killed, wounded, or violently beaten; the diſputed property is to be adjudged forfeited to government. It is declared however, by Section V, Regulation II. 1805, that the ſummary enquiry and reſtoration to poſſeſſion, authorized by the regulations abovementioned, "ſhall be reſtricted to caſes of forcible diſpoſſeſſion, which may be complained of, to the proper zillah or city court, within three months after ſuch diſpoſſeſſion ſhall have taken place; unleſs it be clearly ſhewn and eſtabliſhed that the complainant was prevented by good and ſufficient cauſe from preferring his complaint, either in perſon or by his repreſentative, within that period." It is further explained by Section XIII, that when the zillah and city judges, from the urgency of other buſineſs, may not be able to make the preſcribed enquiry, in this and other inſtances wherein a ſummary proceſs is allowed by the regulations, with the expedition requiſite in ſuch caſes, they may refer the ſame to their regiſters; provided that the cauſe of action be ſuch as would be referable to them in a regular ſuit, under the rules hereafter ſtated; and provided alſo, that the judge, who may have referred any ſuch caſe, for ſummary enquiry by his regiſter, may at any time recal the ſame, if he ſhould ſee occaſion for it; or, if he ſhould ſubſequently find time to inveſtigate the caſe himſelf. The judge is likewiſe empowered, in any particular caſe which may appear to require it, to reviſe and amend

In what caſes a judgment of forfeiture to be paſſed againſt the diſpoſſeſſor.

Or the diſputed property to be adjudged forfeited to Government.

Period limited for the application of the ſummary proceeſs allowed on complaints of forcible diſpoſſeſſion.

In what caſes the ſummary enquiry authorized in this and other inſtances, may be referred by the zillah or city judge to his regiſter.

And under what proviſos.

amend any order paſſed by his regiſter in ſuch caſes, on repreſentation from the parties or otherwiſe.*

What regular ſuits may be referred to the regiſters of the zillah and city courts.

R. XIII, 1793, § VI.
R. VIII, 1794, § II, to XI.
R. XXXVI, 1795, § II, to IV.
R. LIV, 1795.
R. III, 1800.
R. XII, 1803, § VI, to X.
R. XLIX, 1803, § VI, and XXI.

To prevent the time of the zillah and city judges from being occupied with the trial of petty ſuits, and conſequently to enable them to determine cauſes of magnitude with greater expedition, they were empowered, by Section VI, Regulation XIII, 1793, to authorize the regiſters of their reſpective courts to try and decide ſuits for money, or any perſonal property, in which the amount or value conteſted ſhould not exceed two hundred ſicca rupees; and ſuits for malgoozary land, the annual produce of which ſhould not be above two hundred ſicca rupees; or for lakheraj land the proceeds of which ſhould not be more than twenty ſicca rupees per annum. But the ſame regulation directing that the decrees paſſed by the regiſter were to be counterſigned by the judge, to denote his approbation of them; and were not to be conſidered valid unleſs they were ſo counterſigned; he was obliged to reviſe the proceedings of the regiſter in every caſe; which often occupied as much of his time as would have been required for the trial of the ſuit in the firſt inſtance; and tended to defeat the object of the reference. With a view therefore to the more full attainment of that object, the ſection above mentioned was reſcinded by Regulation VIII, 1794, and the deciſion of the regiſter was declared final in all ſuits referred to him for money or perſonal property, the amount or value of which ſhould not exceed twenty-five ſicca rupees;

R. XIII, 1793, § VI, reſcinded by R. VIII, 1794.

* The court of ſudder dewanny adawlut, on the 21ſt June 1803, directed the provincial courts to inform the zillah and city judges, that complaints of forcible diſpoſſeſſion, preferred under Regulations XLIX, 1793, and XXXII, 1803, are not to be filed as regular ſuits; and left for inveſtigation according to their order and number; as ſuch practice muſt defeat the end propoſed of preventing affrays and bloodſhed; that the preſcribed ſummary enquiry is to be made immediately upon the receipt of ſuch complaints; and upon proof of the complainant's forcible diſpoſſeſſion, the land and other property is to be reſtored to him, leaving the diſpoſſeſſor to a regular ſuit; but if it appear that the party complaining has not been forcibly diſpoſſeſſed, he is to be referred to a regular ſuit for the proſecution of his claim to the property in diſpute.

under

under a diſcretionary power, reſerved to the judges of the zillah and city courts, of reviſing the deciſions paſſed by the regiſters in ſuch caſes, whenever the decrees of the latter might appear to them obviouſly unjuſt or erroneous. It was, at the ſame time, provided, that from all deciſions paſſed by the regiſter, in ſuits for real property, or for perſonal property exceeding twenty-five ſicca rupees, an appeal ſhould lie to the provincial court of the diviſion, under the rules preſcribed regarding appeals from deciſions paſſed by the judge. But this proviſion being found to interfere conſiderably with the more important duties of the provincial courts of appeal, it was enacted by Regulation XXXVI, 1795, that the appeal from the regiſter's deciſion, before allowed to the provincial court, ſhould in future lie to the judge of the zillah or city court; under rules ſimilar to thoſe preſcribed regarding appeals to the provincial courts from deciſions paſſed by the judges; except that the petition of appeal is to be preſented within thirty days,* either to the regiſter or to the judge; the latter of whom is empowered to admit the appeal after the preſcribed time, if the appellant can ſhew ſufficient cauſe for not having filed his petition within the limited period; and the judge, on admitting an appeal, is to cauſe the petition, endorſed with the word "admitted" under his official ſeal and ſignature, to be ſent to his regiſter; who is thereupon to ſubmit to the judge all the original proceedings and papers, with his decree, in the cauſe appealed. This rule and limitation, re-enacted for the ceded provinces by Regulation XII, 1803, are ſtill in force for thoſe provinces; where there has not yet been any conſiderable accumulation of cauſes depending before the judges of the civil courts. But in Bengal, Behar, Oriſſa, and Benares, it has been found neceſſary, for the more expe-

Alteration reſpecting appeals from the regiſter's deciſions made by R. XXXVI, 1795.

Rule and limitation in force for the ceded provinces, under R. XII, 1803, VI, to X.

New rule enacted for Bengal.

* Orginally from the date of the regiſter's deciſion; but, under Section VIII, Regulation II, 1805, to be calculated from the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel.

ditious

Bahar, Orissa and Benares, by R. XLIX, 1803, § VI.

ditious decision of suits in the zillah and city courts, to empower the judges by Section VI, Regulation XLIX, 1803, (whenever, on consideration of the number of causes under reference to their registers, and the number depending before themselves, it may appear to them conducive to the more speedy administration of justice) to refer to their registers, for trial and decision in the first instance, any causes depending in their respective courts, for money or other personal property, not exceeding in amount or value the sum of five hundred sicca rupees; or for malgoozary land, the annual produce of which may not exceed five hundred sicca rupees; or for lakheraj land the produce of which may not be more than fifty sicca rupees per annum; or any other description of real property, the computed value of which may not be above five hundred sicca rupees. Section VI, Regulation VIII, 1794, whereby the decision of the registers was made final in suits for personal property not exceeding twenty five sicca rupees, was at the same time rescinded; as suits within this amount may some times involve questions of a general and important nature, wherein an erroneous decision, not revocable by appeal, might be of serious ill consequence; and it is provided, that an appeal shall lie to the zillah and city judges from all decisions passed by their registers, if the appeal be preferred in conformity to Section III, Regulation XXXVI, 1795, and the general rules for appeals therein referred to. To enable the zillah and city judges to maintain the most efficient control over the native commissioners (hereafter mentioned) acting under them in the administration of justice, and to bring the official conduct of such commissioners, in all cases, before the judges; as well as to enable the parties in every suit, tried in the first instance by a native commissioner, to obtain, on appeal, a further trial and decision by the zillah or city judge; it was also deemed proper to discontinue the appellate jurisdiction, which, by Regulation III, 1800, had been vested in the registers of the zillah and city courts, for the trial of

R VIII, 1794, § VI, rescinded by R XLIX, 1803, § VI.

An appeal allowed in all cases from the register's decision, to the zillah or city, judge.

R III, 1800, granting appellate jurisdiction to the registers, in certain cases, also rescinded by R. XLIX, 1803, § VI.

appeals

appeals from deciſions of the native commiſſioners, when the property in diſpute might not exceed twenty-five ſicca rupees. The judges are further declared, by Regulation XLIX, 1803, to be at all times authorized to recal from their regiſters any ſuits referred to them, which may not have been decided; and which, for the more ſpeedy adminiſtration of juſtice, or for any other reaſon, they may deem it proper to try and determine themſelves in the firſt inſtance; or to refer for trial to a native commiſſioner, if the ſuit be referable to ſuch under the regulations.

Judges may, at any time, recal ſuits referred to their regiſters, if not decided.

For hearing and deciding the cauſes referred to the regiſters of the zillah and city courts, the judges are to cauſe them to ſit three days in every week; or oftener if their other avocations will permit. The regiſter is to try the ſuits referred to him in open court; and is to be guided by the ſame rules as are preſcribed for the trial of ſuits before the judge. The zillah and city judges may permit their regiſters to cauſe the depoſitions of witneſſes, in ſuits referred to them, to be taken before their aſſiſtants, or any principal native officer, in the mode, and under the reſtrictions, ſpecified in Section XXI, Regulation XLIX, 1803, whenever, from the number of cauſes depending before the regiſter, it may appear to them indiſpenſably neceſſary for the ſpeedy determination of ſuch cauſes. But this power is not to be exerciſed by any regiſter without the permiſſion of the judge, communicated to him by a written precept, which is at all times revocable when the judge may conſider it no longer neceſſary to continue to his regiſter the permiſſion thereby granted. All proceſs whatever, which it may be neceſſary to iſſue in ſuits referred for trial to the regiſter, is to be iſſued under the ſeal of the court and ſignature of the regiſter; to be executed by the officers of the court; and to be conſidered in every reſpect of the ſame force and validity as ſimilar proceſs iſſued in cauſes under trial before the judge. The judges of the zillah and city courts are alſo generally empowered

Regiſters, how often to ſit and by what rules to be guided in trying cauſes referred to them

May cauſe depoſitions of witneſſes to be taken, as authorized by R. XLIX, 1803, § XXI; with ſpecial permiſſion of the judge.

Proceſs in ſuits referred to the regiſter how to be iſſued, and executed.

Validity of ſuch proceſs.

R. XLIX, 1803, § XX.

What other proceſs may be ſigned and iſſued by the regiſters and their aſſiſtants.

empowered to employ their regiſters and aſſiſtants in ſigning and iſſuing any proceſs of court, which they may deem proper to be ſigned and iſſued by them; and to which the ſignature of the judge may not be ſpecially required by any regulation.

Rules for appointment of native commiſſioners. R. XL, 1793. R. XXXI, 1795. R. XXXVI, 1795. & V. R. XVIII, 1797. R. XVI, 1803. R. XLIX, 1803.

For the further relief of the zillah and city courts from the trial of petty ſuits; as well as to ſave the parties and witneſſes in ſuch ſuits from the inconvenience to which they would be ſubjected by the neceſſity of attendance at the court of the zillah or city, if this were the only local tribunal; and to promote, by additional ſubordinate judicatures, the general ſpeedy adminiſtration of civil juſtice; native commiſſioners are appointed under the regulations ſpecified, to hear and decide, in the firſt inſtance, ſuits for money, or other perſonal property, not exceeding in amount or value fifty ſicca rupees. Such commiſſioners are of three denominations viz. aumeens, or referees, ſaliſan, or arbitrators, and munſiffs, or native juſtices. In the firſt capacity they are authorized to try and determine ſuch ſuits only as may be referred to them by the judge of the city, or zillah, in which they are appointed. In the ſecond capacity, they may hear and decide, without reference from the judge, any ſuits within the preſcribed limitation, which may be voluntarily ſubmitted to their award by arbitration bonds. In the third capacity ſtated, they have an original juriſdiction, which was formerly limited to the cognizance of the ſuits preferred to them againſt under-renters or tenants of land, in the eſtate or farm included within the extent of their commiſſion; but for the general convenience of the inhabitants, reſiding at a diſtance from the zillah courts, the authority of native commiſſioners, veſted with the powers of munſiff, under Regulations XVI, and XLIX, 1803, has been extended "to receive, try, and determine all ſuits preferred to them againſt any native inhabitant of their reſpective juriſdictions, for money or other perſonal property not exceeding in amount or value the ſum of

Three denominations of commiſſioners.

Aumeens. Referees.

Saliſan. Arbitrators.

Munſiffs. Native juſtices.

Authority of the latter, under R. XVI, & XLIX, 1803.

fifty

fifty ſicca rupees; provided the claim be really for money due, or property belonging, to the plaintiff; or for the value of ſuch property; and be not for damages on account of alleged perſonal injuries; or for perſonal damages of whatever nature; no claim for which" (in conſequence of experienced litigiouſneſs in ſuch caſes) "is to be heard by any commiſſioner without an order of reference from the zillah dewanny adawlut." The commiſſioners appointed to act as munſiffs, under the regulations laſt mentioned, are alſo empowered to act as referees and arbitrators; and are to receive a ſunnud under the ſeal and ſignature of the judge of the zillah, in which they may be appointed, according to the form preſcribed by the tenth clauſe of Section XXIX, Regulation XVI, 1803, and the tenth clauſe of Section XIV, Regulation XLIX, 1803. But a ſeparate form of ſunnud is preſcribed, by Section VI, Regulation XL, 1793, and Section IV, Regulation XVI, 1803, for commiſſioners appointed referees and arbitrators only; and they are reſtricted from exerciſing the powers of munſiff without ſpecial authority for that purpoſe. The whole of the native commiſſioners are to be nominated by the zillah and city judges, and approved by the ſudder dewanny adawlut; without whoſe ſanction no perſon is authorized to act as commiſſioner; nor can any perſon appointed be removed from his office, during the period of his commiſſion, without ſufficient cauſe proved to the ſatisfaction of that court. The number of commiſſioners, in the cities of Dacca, Moorſhedabad, Patna, and Benares, is directed to be ſuch that the judge may not have occaſion to refer to them reſpectively more cauſes than they be able to determine with promptneſs; and in the ſeveral zillahs, where local circumſtances will admit, is to be ſuch, that the defendant may not be obliged to proceed a greater diſtance than five coſs to anſwer any ſuit that may be preferred againſt him. It is further provided, that the general local juriſdiction of a munſiff be the ſame with that of the police juriſdiction (where police doragahs have been appointed) in which he may be empowered to officiate; but the ſudder dewanny

Munſiffs empowered to act alſo as referees and arbitrators.

But referees and arbitrators reſtricted from exerciſing powers of munſiff.

Native commiſſioners, by whom to be nominated, approved, and removed.

Their number how to be regulated.

Further proviſion for local juriſdiction of munſiffs.

wanny adawlut, on the report of the zillah judge, may authorize a deviation from this rule, whenever it may appear advisable to appoint more than one munsiff, within a police jurisdiction; or to include more than one police jurisdiction within that of a munsiff. The appointment of commissioners with the powers of munsiff has not, however, been deemed necessary within the cities, where courts are established; and no munsiff is to be appointed within five cos of the station where a zillah court is held, unless the zillah judge shall, for any particular reason, consider it advisable to appoint a munsiff within such distance; in which case he is to report the same for the determination of the sudder dewanny adawlut. In the selection of commissioners to act as munsiffs, the judges are not restricted to any particular descriptions of persons; but are required to be particularly careful in selecting persons of good character and sufficient ability; as well as duly qualified by their education and past employments to discharge satisfactorily the trust reposed in them; and are to report to the sudder dewanny adawlut the information they may have obtained on these points, respecting any person proposed by them to be vested with the powers of munsiff. The cauzees of the four cities are to be nominated referees and arbitrators, in virtue of their offices; and the judges are to nominate a sufficient number of other persons, of acknowledged character and ability, who may be willing to undertake the trust. The cauzees of the towns, or places, in which the several zillah courts are established, are also to be referees and arbitrators in virtue of their respective offices. But the other commissioners, to act as referees and arbitrators only, are to be selected by the zillah judges from the descriptions of persons specified in the third clause of Section V, Regulation XL, 1793; Section V, Regulation XXXVI, 1795; and the fifth clause of Section III, Regulation XVI, 1803; namely, proprietors of land, managing their own estates; farmers of land, holding their farms from Government; tehseeldars or native collectors of the public revenue; managers of joint undivided estates, or of

And restriction of their appointment within the cities, where courts are established; as well as within five cos of any zillah court.

Rule for the selection of persons to act as munsiffs.

Who are to be referees and arbitrators in the four cities.

And in the several zillahs.

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the eſtates of diſqualified landholders; under renters, or officers of credit and reſponſibility intruſted with the collection of land-rents; creditable merchants, traders, and ſhopkeepers, or other perſons of property and character, reſiding in towns, bazars, hauts, gunges or aurungs, of ſufficient extent to require a ſeparate commiſſioner; ultumghadars and jagheerdars, or their managers; and mofuſſil cauzees. The judges are enjoined to nominate, for the offices of referee and arbitrator, ſuch of the perſons above ſpecified as may be beſt qualified for the truſt by their character and ability. But their commiſſions are to remain in force only whilſt they hold the ſituations, in virtue of which they may have been ſelected; unleſs for ſpecial reaſons the ſudder dewanny adawlut ſhould judge it proper to diſpenſe with this rule: and that court may at all times order the recal of any commiſſion granted, if the continuance of it appear unneceſſary, or inexpedient.

Duration of commiſſions to referees and arbitrators.

And general power of recal, veſted in ſudder dewanny adawlut.

The rules enacted for the guidance of the native commiſſioners, in trying and determining the ſuits cognizable by them, are detailed in the regulations referred to; and in caſes for which no expreſs proviſion may have been made, they are directed to obſerve, as nearly as may be practicable, the rules preſcribed for the adminiſtration of civil juſtice in the courts of dewanny adawlut. Thoſe appointed to act as munſiffs muſt be ſworn to the faithful execution of the truſt repoſed in them; and the whole of the commiſſioners are required to take the eſtabliſhed form of oath, or to ſubſcribe a declaration to the ſame effect. They are not to allow their officers, ſervants, or any other perſons, to interfere in the trial of ſuits depending before them; and no cauſe is to be referred to, or tried by a commiſſioner, in which he, or any of his immediate ſervants, may be a party, or intereſted. They are empowered to ſummon parties and witneſſes; (not being women whoſe rank and caſt may be ſuch as to render it improper to require their public appearance;) and upon non-attendance,

Rules for guidance of native commiſſioners, in trying and determining the ſuits cognizable by them.

Powers to ſummon parties and witneſſes, and to attach perſonal property in certain caſes.

attendance, or the refuſal of defendants to give ſecurity for their appearance, if the ſuit be for more than ten rupees, or in cauſes within that amount if the defendant is about to abſcond, are authorized to attach any perſonal property belonging to the defendant, or non-attending witneſs, not exceeding the amount or value ſued for. They are alſo empowered to impoſe a fine on any party, vakeel, or witneſs, for diſreſpectful behaviour to the commiſſioner, whilſt in attendance upon him for the trial of a ſuit. But no commiſſioner is to enforce his own deciſion, in any caſe whatever: or to confine a party, vakeel, or witneſs, in any ſuit which may come before him. The zillah and city courts are to enforce all deciſions paſſed by the commiſſioners, whether as referees, arbitrators, or munſiffs; and for this purpoſe reports of all cauſes decided by them, with the original papers and documents in each cauſe, are to be tranſmitted by them monthly, on the fifth of each ſucceeding month. The commiſſioners are further required to deliver copies of their decrees to the plaintiff and defendant, or their vakeels, within three days after the time of deciſion. All ſuits decided by them, are appealable to the judge of the zillah or city in which they are appointed; provided the petition of appeal be preſented within thirty days after the delivery, or tender in open court, of a copy of the decree, to the appellant or his vakeel. And a diſcretionary power is veſted in the judge to admit the appeal, after that period, if the appellant can ſhew ſatisfactory cauſe for not having preſented his petition within the time limited. The zillah and city judges are likewiſe authorized, for any reaſon that may appear to them ſufficient, to bring up for trial before themſelves, or their regiſters, any cauſes depending before the commiſſioners; and in all caſes where a ſuit tried in the firſt inſtance by a native commiſſioner may appear not to have been ſufficiently inveſtigated, the judge may either refer ſuch cauſe back to the commiſſioner by whom it was originally tried; or to any other commiſſioner

Alſo to impoſe a fine for diſreſpect to them, in the diſcharge of their duties.

But not to confine any perſon, or enforce their own deciſions.

Monthly report of deciſions to be made, for enforcement, to the zillah and city courts.

Copies of decrees to be delivered within three days.

And all ſuits decided by commiſſioners appealable to thoſe courts.

R. II, 1805, § VIII. Within thirty days after deliſvery, or tender, of a copy of the decree.
Or, ſubſequently, at diſcretion of the judge.

Judge may alſo bring before himſelf, or regiſter any cauſe depending before a commiſſioner.

And, in all caſes not ſufficiently inveſtigated by a commiſſioner, may call for further evidence; or refer the cauſe to the ſame, or another com-

commiſſioner competent to try the ſame; or to his regiſter; with inſtructions to take and tranſmit the further evidence required; or, after taking further evidence to paſs a new deciſion in the cauſe; or to try and determine the cauſe *de novo*; ſubject, in either of the two latter caſes, to a further appeal to the judge, againſt ſuch ſecond deciſion; without any additional charge to the appellant for the eſtabliſhed inſtitution fee, if this fee ſhall have been already paid by him upon the original appeal.

miſſioner, or his regiſter, for further inveſtigation and deciſion; or for trial *de novo*.

Subject to appeal from the ſecond deciſion without inſtitution fee, if before paid.

In conſideration of the ſtate of landed property in the diſtrict of Chittagong, diſtributed, for the moſt part, amongſt numerous petty proprietors, between whom and their tenants ſo many diſputes continually aroſe regarding the property or boundaries of their reſpective tenures, that the unremitting attention of the zillah judge, and his regiſter, were found inſufficient to bring them to an early deciſion; the judge of that diſtrict was authorized, by Regulation XVIII, 1797, to refer to any of the native commiſſioners, acting under him in the capacity of referee, ſuits for landed property, the annual produce of which, if malgoozary, ſhould not exceed fifty ſicca rupees; or if lakheraj, the produce of which ſhould not exceed five ſicca rupees per annum. The perſons to whom ſuch cauſes may be referred, are to receive a ſeparate ſunnud, as commiſſioners of land ſuits; and are to be guided by the general rules enacted for the guidance of native commiſſioners appointed aumeens or referees. It is further provided, that in all caſes of inheritance of, or ſucceſſion to, landed property; the Mahomedan law with reſpect to Mahomedans, and the Hindoo law with regard to Hindoos, ſhall regulate their deciſions; and the commiſſioners, in all ſuch caſes, are to obtain an expoſition of the law from the law officers of the zillah court. They are alſo to affix, in ſome conſpicuous part of their cucherries (court-rooms) a notification of the ſuit preferred, with a requiſition to all

Preamble to Regulation XVIII, 1797. Special regulation for the appointment of commiſſioners of land ſuits in zillah Chittagong; and for referring to them ſuits for landed property not producing more than fifty rupees per annum, if malgoozary; or five rupees, if lakheraj.

Rule to be obſerved by ſuch commiſſioners, in all caſes of inheritance or ſucceſſion.

perſons

perſons who have any claim to the property ſued for, to prefer the ſame within a limited period; and their deciſions are to include all claimants to the property in diſpute, who, according to the law of the parties, have a juſt and legal title to ſhare therein. But the commiſſioners of land ſuits are to report all deciſions paſſed by them, to be enforced by the zillah court, as in ſuits for perſonal property, and an appeal is, in every caſe, equally open to the judge.

Deciſions to be enforced by zillah court; and appeal to it open in all caſes.

Court of ſudder dewanny adawlut empowered to appoint a head native commiſſioner, with extended powers, in any zillah, or city, where it may be requiſite.

In addition to the native commiſſioners above mentioned, the court of ſudder dewanny adawlut are empowered by Section IX, Regulation XLIX, 1803, (and Section XXVI, Regulation XVI, 1803, for the ceded provinces,) to authorize the appointment of a head native commiſſioner, in any city or zillah, wherein ſuch appointment may, on repreſentation from the judge, or otherwiſe, appear to the court adviſable, for the trial of any ſuits referred to him, by the zillah or city judge, for perſonal property not exceeding in amount or value one hundred ſicca rupees; or for the property or poſſeſſion of land, the annual produce of which, if malgoozary, may not be above one hundred ſicca rupees; or more than ten ſicca rupees, if lakheraj; or for any other deſcription of real property, the computed value of which may not exceed one hundred ſicca rupees. Such head commiſſioners are to be nominated, for the approbation of the ſudder dewanny adawlut, by the zillah and city judges; who are required to be particularly careful in ſelecting perſons of good character and known ability, as well as duly qualified by their education and paſt employments, to diſcharge ſatisfactorily the truſt repoſed in them. They are to receive ſunnuds of appointment under the ſeal and ſignature of the judge in whoſe juriſdiction they may be appointed to act, and are not to be removed from office without ſufficient cauſe proved to the ſatisfaction of the ſudder dewanny adawlut. The commiſſioners ſo appointed have the denomination of ſudder aumeen, or head referee; are directed

By whom to be nominated, approved, and removed; and what perſons to be ſelected for the office of head commiſſioner.

To be denominated "ſudder aumeen," or

rected to hold their cucherries at the ſtations where the zillah or city courts are held; and are required to obſerve the general rules enacted for the guidance of other native commiſſioners acting in the capacity of referees; as well as the ſpecial rules preſcribed for the commiſſioners of land ſuits in zillah Chittagong; except that all cauſes, referred to a head native commiſſioner, are to be pleaded by the parties in perſon, or by an authorized vakeel of the zillah or city court; and that the uſual proceſs for ſummoning and taking ſecurity from defendants, as well as for cauſing the attendance of any witneſſes who may not attend before the head commiſſioner at the requiſition of the parties, in common with all other proceſs which it may be neceſſary to iſſue relative to any cauſe referred to, or decided by, a head native commiſſioner, is to be iſſued under the ſeal of the zillah or city court, to which the commiſſioner may be attached; and under the official ſignature of the judge, regiſter, or aſſiſtant to the regiſter of ſuch court. It will be ſufficient to add that the whole of the native commiſſioners deſcribed are liable to proſecution, in the dewanny adawlut, for corruption in the diſcharge of their truſts; as well as for any oppreſſive and unwarranted act of authority. Upon proof of the charge to the ſatisfaction of the judge, he is directed to give judgment againſt the offender for three times the amount or value, of the money or property corruptly received; with all coſts of ſuit; or in other caſes of oppreſſion, to award ſuch damages and coſts to the party injured, as may appear to him equitable. But no commiſſioner is liable to be proſecuted for want of form, or for error, in his proceeding or judgment. Nor is any proceſs to be iſſued againſt a commiſſioner charged with corruption, or oppreſſion, unleſs the judge ſhall be previ-

head referee, and to hold their cucherry at the ſtation of the zillah or city court. By what rules to be guided.

By whom cauſes referred to them to be pleaded.

And in what manner all proceſs, relative to ſuch cauſes, to be iſſued.

All native commiſſioners liable to a civil proſecution for corruption, or any oppreſſive, and unwarranted act.

Judgment to be given on proof, in ſuch caſes.

But no commiſſioner to be proſecuted for want of form, or for error. Nor proceſs to be iſſued, on charges of corruption or op-

ouſly

preſſion, without ground to believe them well grounded.

ouſly ſatisfied, by ſufficient evidence, that there is ground to believe the charge to be well founded *.

R. XLIX, 1803. Preamble and §§ II, III, IV. Provision for the occaſional appointment of aſſiſtant judges.

THE number of civil cauſes depending before the judges of ſome of the zillah and city courts having become ſo conſiderable, that great delay muſt have occured in the inveſtigation or deciſion of them, and of other cauſes which might be inſtituted previouſly to their determination, unleſs ſome proviſion were made to expedite the trial of them; and the accumulation of ſuch cauſes having chiefly proceeded from

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* There has not yet been ſufficient experience, under the proviſions made by Regulation XLIX, 1803, for the new arrangement of native commiſſioners empowered to act as munſiffs; and for the appointment of head native commiſſioners, where required; to form a deciſive judgment upon the utility of this ſubordinate judicial eſtabliſhment. All powers entruſted to the natives, eſpecially without fixed and liberal allowances, are liable to abuſe; and it cannot be doubted that the native commiſſioners have, in ſome inſtances, perverted to purpoſes of ſelf-intereſt, exaction, and oppreſſion, the authority delegated to them for the more ſpeedy and efficient adminiſtration of juſtice. But as far as an opinion can be formed, from the proportion of appeals againſt their deciſions, to the total number of cauſes decided by them, in paſt years, their appointment appears to have been, in general, of conſiderable public advantage; and the following enumeration of ſuits actually decreed or diſmiſſed by them, or adjuſted before them by agreements (razeenamahs) of the parties, in the provinces of Bengal, Bahar, Oriſſa, and Benares, taken from official reports tranſmitted to the court of ſudder dewanny adawlut, will ſhew the abſolute impoſſibility of providing for the trial and deciſion of the numerous caſes of litigation, which occur in theſe extenſive and populous provinces, without the aid of ſome deſcription of inferior judicatures under native ſuperintendence.

In the year	1797,	Decreed or	Diſmiſſed	1,26,766,	Adjuſted by parties	1,33,048,
	1798,	ditto	ditto	1,63,540,	ditto -	1,75,182,
	1799,	ditto	ditto	1,61,413,	ditto -	1,48,293,
	1800,	ditto	ditto	1,72,284,	ditto -	1,66,042,
	1801,	ditto	ditto	1,83,422,	ditto -	1,84,811,

The number of cauſes decided on trial, or diſmiſſed on default, by the zillah and city judges, and their regiſters; or adjuſted before them on razeenamahs; during the ſame period, was as follows:

BY THE JUDGES.

In the year	1797,	Decreed or	Diſmiſſed	12,674,	Adjuſted by parties	2187,
	1798,	ditto	ditto	10,670,	ditto -	1121,
	1799,	ditto	ditto	10,705,	ditto -	1167,
	1800,	ditto	ditto	8261,	ditto -	1459,
	1801,	ditto	ditto	7443,	ditto -	1148,

BY THE REGISTERS.

In the year	1797,	Decreed or	Diſmiſſed	17,682,	Adjuſted by parties	6087,
	1798,	ditto	ditto	19,946,	ditto -	3698,
	1799,	ditto	ditto	14,644,	ditto -	2590,
	1800,	ditto	ditto	15,217,	ditto -	3128,
	1801,	ditto	ditto	12,304,	ditto -	2341,

accidental

accidental circumſtances, the effect of which might be moved by a temporary arrangement, for the trial and deciſion of the cauſes in arrear; without a permanent alteration of the eſtabliſhed juriſdictions; it was deemed expedient that proviſion ſhould be made for the occaſional appointment of an aſſiſtant judge, to aſſiſt in the trial and deciſion of cauſes depending before the judge of any zillah or city court in which ſuch an appointment might at any time be required. It was accordingly provided by Regulation XLIX, 1803, that "when the number of civil cauſes depending before the judge of any zillah or city court may be ſuch as to require the aid and appointment of an aſſiſtant judge, for the ſpeedy inveſtigation and deciſion of ſuch cauſes, the Governor General in Council, at the recommendation of the court of ſudder dewanny adawlut, or otherwiſe, if it ſhall appear to him expedient, will appoint an aſſiſtant judge for the zillah or city, wherein it may be requiſite; to be denominated, "aſſiſtant judge of the dewanny adawlut;" who, previouſly to entering upon the execution of the duties of his office, ſhall take and ſubſcribe the ſame oath as is directed to be taken and ſubſcribed by the judges of the zillah and city courts." The aſſiſtant judges ſo appointed are empowered to try and decide, according to the regulations in force for the adminiſtration of civil juſtice, any depending cauſes that may be referred to them by the judge of the zillah or city in which they may be appointed to officiate. The judges of the zillahs and cities, wherein aſſiſtant judges may be appointed, are authorized to refer to them, from time to time, during the continuance of ſuch ſpecial appointments, any cauſes depending in their reſpective courts; whether original ſuits, or appeals from the deciſions of their regiſters, or of the native commiſſioners. The ſelection of the particular cauſes to be ſo referred is left to the diſcretion of the judge; but he is to be guided, as far as circumſtances may admit, by the general rule which directs, with certain exceptions, that depending

Denomination, and oath to be taken by them.

What cauſes may be tried and decided by them.

Rule for reference of depending cauſes to them.

depending cauſes be brought on for trial according to the order in which they are filed. The aſſiſtant judges are to try the ſuits referred to them in open court, to be held in the court houſe of the zillah or city dewanny adawlut, or in ſome convenient place adjacent thereto. The judge is to allot a ſufficient number of the eſtabliſhed pleaders to attend the court of the aſſiſtant judge; and the Mahomedan and Hindoo law officers of the zillah or city court are to expound the law in every caſe before him, wherein it may be requiſite. All proceſs, in ſuits referred to an aſſiſtant judge, is to be iſſued under his ſignature, and the ſeal of the zillah and city court; the officers of which are to execute it in like manner as ſimilar proceſſes are iſſued in cauſes tried by the judge; and it is to be conſidered of the ſame force and validity, incurring the ſame penalties for diſobedience or reſiſtance, as proceſs ſigned by the judge. In the trial of all cauſes referred to him, the aſſiſtant judge is to be guided by the ſame rules as are preſcribed for the trial of the ſame cauſes before the judges of the zillah and city courts; and his deciſions are to be held final, or appealable to the provincial court of appeal, according as the cauſe would, or would not, have been appealable to the provincial court, if it had been decided by the judge of the zillah or city court.

Court of the aſſiſtant judge where to be held.

What pleaders to attend it.

And what law officers to expound the Hindoo or Mahomedan law.

Proceſs how to be iſſued and executed.

And penalties for reſiſtance to it.

Aſſiſtant judges to be guided by the rules preſcribed for the trial of cauſes in the zillah and city courts.

And their deciſions to be final, or appealable, as if paſſed by the judges of thoſe courts.

WHAT cauſes are ſo appealable, will be ſpecified after ſtating the general conſtitution of the provincial courts. But in concluding the foregoing imperfect recital of the proviſions made by the exiſting Regulations, for the adminiſtration of civil juſtice in the firſt inſtance, it is impoſſible to with-hold the acknowledgement due to the benevolence, equity, and policy, which have dictated them; with ſuch evident attention to the intereſts of humanity; the rights, laws, and prejudices of the people inhabiting this portion of the Britiſh Empire; and the ſureſt, as well as the moſt honorable, means of maintaining that empire in India, by eſtabliſhing it upon the

General obſervations on the foregoing proviſions, for adminiſtering civil juſtice in the firſt inſtance.

the ſolid foundations of juſtice, protection, and conciliation. In the ſimplicity of the form of action allowed in all caſes, varying only as regular or ſummary, except in the mode of commencing a ſuit againſt Government; as well as in the general tenor of the rules preſcribed for the pleading, trial, and deciſion, of every ſuit cognizable by the civil courts, and determinable either by ſpecific law, or on principles of reaſon and equity; the intelligent regard ſhewn to local circumſtances affecting the judicial officers, as well as the ſuiters, and their pleaders, is equally conſpicuous. If, notwithſtanding the number of civil courts which have been eſtabliſhed; the permanent means afforded for the ſpeedy inveſtigation and deciſion of inconſiderable cauſes, by the eſtabliſhments of native commiſſioners; as well as in ſuits to a larger amount, by the extended reference now authorized to the regiſters of the zillah and city courts; and the occaſional aid provided for, to expedite, when neceſſary, the whole of the cauſes depending in thoſe courts, by the appointment of aſſiſtant judges; it ſhould ſtill be found that the laws are not, in any inſtance, adminiſtered with that promptneſs, certainty, and facility, which are requiſite to enſure their full beneficial effect; it cannot be doubted that experience will ſuggeſt further remedies to ſupply this radical defect; and that ſuch meaſures as may be practicable, expedient, and ſufficient for this purpoſe, will be adopted. If any thing be wanting to ſecure the integrity of the native commiſſioners, who now receive no fixed ſalary, but are allowed the inſtitution fee, of one anna per rupee, in all cauſes decided by them upon an inveſtigation of the merits, or adjuſted before them by the agreement of parties; it may alſo be confidently preſumed that ſo eſſential a requiſite to the purity, impartiality and conſequent utility, of every judicial eſtabliſhment, which has been ſo wiſely and liberally granted to the preſent European courts of judicature, will not be denied to thoſe under native ſuperintendents. Theſe obſervations, however, are not ſo much intended to apply to any known abuſes of a general, or important nature,

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in the ſubſiſting inferior courts of civil juſtice; or to any defects now unprovided for in the ſuperior courts; as to obviate the force of the only objections which have been, or can be, offered to the adequacy and efficiency of the judicatures actually eſtabliſhed, in accompliſhing the juſt and humane deſign of their inſtitution; and of the rules which have been framed for their guidance.

R. V, 1793. R. IX, 1795. R. IX, 1803. General reaſons for the eſtabliſhment of courts of appeal.

To provide againſt the poſſibility of unjuſt or erroneous deciſions in courts of primary juriſdiction; as well as to ſecure a ſtrict regularity of proceeding in all ſuch courts, by rendering their judgments and the grounds of them, the evidence taken, and every act done or ordered upon the original trial, ſubject to the inſpection and reviſion of a ſuperior authority; it has been deemed expedient, in all countries where a ſyſtem of legal adminiſtration has been introduced, to conſtitute courts of appeal, or review, with powers more or leſs extenſive, according to the objects intended by them. The public utility of ſuch ſuperior courts, in rectifying error, maintaining regularity, and enforcing duty, is obvious; and provided the courſe of juſtice be not too much delayed, or made too expenſive by appeals, the admiſſion of them, within a limited period, muſt eſſentially conduce to the perfection of every judicial eſtabliſhment. To render them efficient however, as well as to prevent their being perverted from their juſt object, to purpoſes of procraſtination, litigiouſneſs, and oppreſſion; it is neceſſary that they ſhould be eaſy of acceſs to all perſons who may have occaſion to reſort to them; and that the appeals preferred to them ſhould be inveſtigated and decided with diſpatch. But previouſly to the year 1793, the only courts of appeal under this preſidency were at Calcutta. In ſuits regarding rent or revenue, which were excluded from the juriſdiction of the dewanny adawluts, and cognizable in the firſt inſtance by the collectors, the appeal, (as already noticed,) lay to the Board of Revenue; and ultimately to the Governor General in Council. In cauſes decided by the

And utility of ſuch courts, provided they are not attended with exceſſive delay or expenſe.

Facility of acceſs and diſpatch neceſſary to render them efficient.

Courts of appeal ſubſiſting before 1793, in what reſpects defective.

courts

courts of mofuſſil dewanny adawlut, parties who conſidered themſelves aggrieved by the deciſions of thoſe courts, had no tribunal to which they could apply for redreſs except the ſudder dewanny adawlut. This court being compoſed of the Governor General and Members of the Supreme Council, it was found requiſite, with a view to prevent a greater number of appeals than the general adminiſtration of public affairs would allow of being heard, to reſtrict the admiſſion of appeals to caſes in which the deciſions of the moſuſſil courts might be for an amount or value exceeding one thouſand ſicca rupees; or for lands the annual produce of which might be more than that ſum, if aſſeſſed for the public revenue; or more than one hundred rupees, if exempt from the payment of revenue*. Under this limitation the greater part of the ſuits determined in the moſuſſil courts, (including the whole of thoſe inſtituted by the lower claſſes of the people) were not appealable; and in ſuits that were appealable, perſons reſiding in the interior parts of the country, whoſe occupations prevented their perſonal attendance in Calcutta, and whoſe circumſtances would not admit of their entertaining a vakeel, at an unlimited expenſe, for the purpoſe of proſecuting an appeal, were often precluded, by the diſtance of their ſituation, from appealing againſt deciſions with which they were diſſatisfied. In addition to this impediment, ariſing from the local ſituation of the ſudder dewanny adawlut, unavoidable delay, in hearing and determining the appeals preferred to that court, was frequently occaſioned by interruptions to the regular ſittings of the court; from the avocations of the Members of Government who compoſed it.

* Suppoſing the land-tax to be nine-tenths of the neat rent produce; at which rate it was formerly computed, when the aſſeſſment was fixed upon the aſcertained or eſtimated annual rent, deducting the actual charges of collection, and *Malikanah* (the proprietor's income) at ten per cent; a neat product of one hundred rupees, from lands paying no tax, was valued as equal to a product of one thouſand rupees from taxable lands. But when the proprietor's allowance was calculated at ten per cent upon the neat revenue paid to government, and not upon the rent; as was done when the lands were let in farm by Government and the farmer ſtipulated to pay the malikanah, diſtinctly from the public revenue; or when the rents were collected khas by the public officers, and the proprietor received ten rupees for every hundred, clear of charges and malikanah, carried to the account of Government; the proportion received by the latter, of the aggregate payments for tax and income, was 100 rupees of 110, or ten-elevenths.

Provincial courts of appeal eſtabliſhed, to remedy the defects ſtated, for Bengal, Bahar, and Oriſſa.

To remedy theſe material defects; and, as ſtated in the preamble to Regulation V, 1793, " the juriſdiction of the courts of dewanny adawlut eſtabliſhed in the ſeveral zillahs, and the cities of Patna, Dacca, and Moorſhedabad, being extended, not only to the cauſes which were cognizable in the courts of mál adawlut, but to civil ſuits of all deſcriptions between individuals; and under certain reſtrictions between Government and its ſubjects; and it being eſſential to the proſperity of the country, that all perſons, eſpecially the cultivators of the ſoil, the traders and manufacturers, and the other claſſes of the lower and moſt induſtrious orders of the community, in the different parts of the provinces, who may be diſſatisfied with the deciſions of thoſe courts, ſhould have an appeal to a higher court; to which they can have ready acceſs; and that this court ſhould be ſo conſtituted, that they may look up to it with confidence for ſpeedy redreſs againſt unjuſt or erroneous deciſions;" the Governor General in Council reſolved, and enacted by Section II of the above Regulation, that four courts of appeal ſhould be eſtabliſhed; one in the vicinity of Calcutta, and one at the cities of Dacca, Moorſhedabad, and Patna, reſpectively. Each court to be ſuperintended by three judges; to be ſtyled the firſt, ſecond, and third, judge of the court, to which they may be appointed; and previouſly to entering upon the execution of their duties, to take and ſubſcribe an oath, of the ſame tenor with that preſcribed to be taken by the judges of the zillah and city courts. Three law officers, (a cauzee, mooftee, and pundit) with a regiſter, and an eſtabliſhment of miniſterial officers, were alſo attached to each court. A fifth court of appeal, conſtituted in like manner, for the province of Benares, was eſtabliſhed by Regulation IX, 1795. And a ſixth court, for the ceded provinces, has been inſtituted by Regulation IV, 1803. The deſignation of this court, which was originally denominated " the provincial court of appeal for the diviſion of the provinces ceded by the Nuwab Vizeer." has been altered, under Regu-

Conſtitution of theſe courts.

Provincial court for Benares.

And for ceded provinces.

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lation IX, 1804, in conſequence of the annexation of the territories ceded by DOULUT RAO SINDHEEAH, to that of "the provincial court of appeal for the diviſion of Bareilly;" at which place the court is held. By the ſame regulation, the territory in Boondelkhund, ceded, by the PESHWA, is added to the juriſdiction of the Benares court. And by Regulation VIII, 1804, the zillahs of Allahabad and Gorukhpoor, in conſequence of their being more contiguous to Benares, than to Bareilly, have been transferred from the juriſdiction of the provincial court for the diviſion of Bareilly, to that of Benares; with a proviſo that the courts of juſtice, and other public authorities, ſhall be guided in their deciſions, and proceedings, in all matters relating to thoſe zillahs, by the Regulations which have been, or ſhall be enacted, in conformity to Regulation I, 1803, for the internal government of the provinces ceded by the Nuwab Vizeer.

Annexations to the Benares diviſion.

With proviſo to maintain the regulations enacted for the annexed diſtricts.

THE particular zillahs and cities, included within the juriſdiction of the ſix provincial courts of appeal, are ſpecified in the Regulations above mentioned; which further direct, that each court be held in a large convenient room, three days in every week, or oftener if the buſineſs ſhall require it; and that no rule, order, proceeding, or decree, ſhall be made, but on court days, and in open court. Two judges are required to hold a court of appeal; and no decree is valid unleſs paſſed by two judges preſent in court; who are to ſign the decree paſſed by them. When a difference of opinion may ariſe, the opinion of the majority is to determine; or, if there be only two judges in court, the ſenior has a caſting vote; except in caſes wherein the deciſion of the provincial court is final; in which the ſenior judge has a caſting voice, provided his ſentiments go to affirm the decree of the inferior court; but if the ſenior judge declare his opinion, in oppoſition to the other judge preſent, that the decree of the inferior court ſhould be reverſed, or altered, the ſuits, on which

R XLVII, 1793, extended to Benares by R. XXV, 1795.
R VII, 1794, § XII, extended to Benares by R XVI, 1795, § XV.
R III, 1797, § VII.
R XV, 1803. General rules for provincial courts, and powers of the judges.

which ſuch difference of opinion may exiſt, are to ſtand over for judgment until the abſent judge ſhall attend; when they are to be decided by the majority of voices. The ſenior judge, (who does not proceed on the circuit of jail-delivery, but is fixed at the ſtation of the court of appeal, for the purpoſe of ſuperintending the buſineſs of that court, and forming a court of appeal with one of the other judges) is further empowered, in the eventual abſence of both the other judges, to receive petitions of appeal; execute decrees and orders; ſummon and examine witneſſes; and generally, to tranſact the current buſineſs of the court: but is reſtricted, in ſuch caſes, from admitting or rejecting any appeal which may be preferred after the preſcribed period; as well as from paſſing a deciſion on any depending cauſe; and from altering any order which may have been paſſed by two or more judges of the court. This limited authority, for the currency of buſineſs, muſt alſo be conſidered to be equally veſted in the ſecond, or third judge of a provincial court, if at any time the only judge preſent; and conſequently the officiating ſuperintendent of the court. A fourth judge of appeal and circuit has been appointed for the Dacca diviſion, in conſequence of its extenſive juriſdiction, and the interruption experienced in holding the court of appeal for this diviſion, from two of the judges being often employed, at the ſame time, on the zillah and city jail deliveries. In conſequence of an accumulation of appeals from this interruption, proviſion has likewiſe been made by Regulation IV, 1802, for conſtituting an occaſional ſecond court of appeal in that diviſion, to conſiſt of the ſecond and third judges; when the whole of the four judges may be on the ſpot. But the object of this regulation being to provide for a ſpeedy deciſion of the cauſes in arrear, the operation of it is to ceaſe whenever this end ſhall appear to the ſudder dewanny adawlut to have been ſufficiently accompliſhed.

Authority of ſenior judge, or officiating ſuperintendent of the court, when two judges are not preſent.

Proviſion for an occaſional ſecond court of appeal in the Dacca diviſion.

UNDER the original regulations of 1793, an appeal was allowed, in all caſes, from the deciſions of the zillah and city courts to the provincial courts of appeal. But to prevent the time of the latter from being occupied by petty cauſes, it was afterwards judged expedient (by Regulation VIII, 1794,) to veſt the zillah and city judges with a final power of deciſion, in ſuits for money or perſonal property not exceeding in amount or value twenty-five ſicca rupees; and by Regulation XXXVI, 1795, their decrees were declared final in appeals from deciſions for money or perſonal property, paſſed by their regiſters under Regulation VIII, 1794; or the native commiſſioners appointed under Regulation XL, 1793. Theſe proviſions for Bengal, Bahar, and Oriſſa, were extended to the province of Benares, by Regulation LIV, 1795. But by Regulation XLIX, 1803, they are reſcinded for the whole of thoſe provinces, with reſpect to appeals from deciſions of the regiſter; and the following rules are ſubſtituted for all decrees which may be paſſed, by the judges of the zillah and city courts, in appeals from deciſions of their regiſters, whether for money or other perſonal property; or for real property. "If "the ſuit be for perſonal property, or for any deſcription of "real property not being malgoozary or lakheraj land, and the "amount or value adjudged or diſallowed by the decree of "the judge ſhall not exceed one hundred ſicca rupees; or, if "the ſuit be for land, and the judgment be for, or againſt, a "claim to malgoozarry land, the annual produce of which "(as defined in Section III, Regulation IV, 1793,) may not "exceed one hundred ſicca rupees; or lakheraj land, the "annual produce of which may not be above ten ſicca ru-"pees; or although the decree of the judge be for, or againſt, "claims to perſonal or real property exceeding the amount, "value, or produce, above ſpecified, if the ſuit be within the "limitation of cauſes referable to the regiſter, and the decree "of the judge ſhall confirm the deciſion of the regiſter; the "determination of the judge ſhall be final; unleſs the pro-

"vincial

R. III, 1793, § XX.
R. V, 1793, § XII.
General appeal to the provincial courts, allowed by the regulations of 1793.
R. VIII, 1794, § VI, and XI.
Limited, in certain caſes, by ſubſequent regulations.

R XXXVI, 1795, § IV.

R. LIV, 1795.
R XLIX, 1803, § VIII.
Limitation of appeals fixed by regulations now in force, in Bengal, Bahar, Oriſſa, and Benares.

In what caſes an appeal lies to the provincial courts, from decrees of the zillah and city judges, paſſed on appeals from deciſions of their regiſters.

" vincial court of appeal deem it proper to admit a ſpecial " appeal to that court, under the diſcretion given by Section " XXIV, of this regulation. If the judge's decree reverſe or " alter the regiſter's deciſion, and the amount or value adjudg- " ed or diſallowed by the decree of the judge, exceed one hun- " dred ſicca rupees; or if the judgment ſo paſſed in oppoſition " to, or variation from, that of the regiſter, be for or againſt " a claim to malgúzary land, the annual produce of which " may exceed one hundred ſicca rupees; or lakheraj land, " the annual produce of which may be above ten ſicca rupees; " a further appeal ſhall lie to the provincial court of appeal, " under the preſcribed rules for appeals to that court." By the ſame regulation the decrees of the zillah and city judges, which were before final in appeals from deciſions of the native commiſſioners, for money or other perſonal property, are alſo declared final in appeals from deciſions, paſſed by the head native commiſſioners, for perſonal or real property, not exceeding the limitation of cauſes referable to them; as well as in appeals from deciſions of the commiſſioners of land ſuits in zillah Chittagong, in cauſes referable to ſuch commiſſioners; provided that the provincial court may, in any particular caſe, admit a ſpecial appeal, if it ſhall appear to them proper, in the exerciſe of the diſcretion hereafter mentioned. But as, under the authority veſted in the judges of the zillah and city courts, to refer all cauſes for perſonal property not exceeding fifty rupees, to any of the native commiſſioners appointed under them, as well as to refer all ſuits for perſonal property, not exceeding one hundred rupees, to the head native commiſſioners, or to their regiſters, it is probable that no cauſes of this deſcription will be tried by themſelves in the firſt inſtance; unleſs from the nature of the ſuit, as involving ſome general queſtion, or otherwiſe, it ſhould appear to be of importance, although the ſum directly at iſſue be of inconſiderable amount; and in ſuch caſes it is deſirable that an appeal from their determination ſhould be open to the provincial court; ſuch part of

R. XLIX, 1803, § XXII. Decrees of zillah and city judges declared final on appeals from deciſions of the native commiſſioners.

R. XLIX, 1803, § XXIII. But an appeal open to the provincial courts in all cauſes tried and decided by the zillah or city judges in the firſt inſtance.

Regulation

Regulation VIII, 1794, as declared the deciſion of the judge to be final, in ſuits tried by himſelf in the firſt inſtance, for money or perſonal property, not exceeding twenty-five rupees, was reſcinded; and an appeal now lies to the provincial courts of appeal, in Bengal, Bahar, Oriſſa, and Benares, in all cauſes whatever, that may be tried by the judges of the zillah and city courts in the firſt inſtance, viz. without a previous trial and deciſion by their regiſters; or by any of the native commiſſioners. This rule however has not yet been extended to the ceded provinces, in which the appeal to the provincial court (except in caſes of default, provided for by the twelfth clauſe of Section XII, Regulation IV, 1803, and by Section XI, Regulation II, 1805,) is reſtricted by Section XXI, Regulation II, 1803, to cauſes in which the decree of the zillah court may be for landed property, the annual produce of which ſhall exceed two hundred ſicca rupees, if malgoozary, or twenty rupees if lakheraj; or for money, perſonal property, or any other deſcription of real property, the amount or value of which ſhall exceed two hundred ſicca rupees.

This rule not yet extended to ceded provinces.

Limitation of appeals to the provincial court in theſe provinces.

THE provincial courts, in general, are however authorized to receive appeals, whatever may be the amount or value at iſſue, in all caſes wherein the judges of the zillah or city courts may have refuſed to admit an appeal from the deciſions of their regiſters, or of the native commiſſioners, on any ground of delay, informality, or other default in preferring it; or, after having admitted the appeal, may diſmiſs it on the ground of ſome default, without inveſtigation of the merits of the cauſe; as well as in all caſes wherein the judges of the zillah and city courts may refuſe to admit, hear, and determine, an original ſuit preferred to them, on the ground of delay, informality, or other default, in preferring it; or having admitted the ſuit, may diſmiſs it on the ground of ſome default, without an inveſtigation of the merits of the caſe. A ſummary proceeding only is directed to be held on ſuch appeals;

R. II, 1801, § IX.
R. IV, 1803, § XII.
R. XLIX, 1803, § XXVI.
R. II, 1805, § XI.
Caſes of default in which an appeal lies to all the provincial courts, whatever may be the cauſe of action.

Rule of proceeding in ſuch caſes.

appeals; and if it appear to the provincial court that the original ſuit in, or appeal to, the zillah or city court, was rejected or diſmiſſed on inſufficient grounds, it may order the zillah or city judge to receive the ſame; or to revive it if received and diſmiſſed; and to try and determine the cauſe upon its merits, according to the regulations. If, however, ſuch appeals ſhall, on enquiry, be found groundleſs and litigious, the provincial courts are directed to puniſh the appellant by a fine to government proportionate to the condition of the party and circumſtances of the caſe. It is alſo provided by Section XXIV, Regulation XLIX, 1803; (which may be conſidered to have been virtually extended to the ceded provinces by Section X, Regulation II, 1805,) that " in all caſes wherein a regular appeal may not lie to the provincial courts from the decrees of the judges of the zillah and city courts, it ſhall be competent to the provincial court to admit a ſpecial appeal, (on performance of the general conditions of appeals) if on the face of the decree of the zillah or city judge, or from any information before the provincial court, it ſhall appear to them erroneous, or unjuſt; or if from the nature of the cauſe, as ſtated in the decree, or otherwiſe, it ſhall appear to them of ſufficient importance to merit a further inveſtigation in appeal. But this diſcretionary authority, veſted in the provincial courts for the correction of erroneous judgments, in particular caſes, is directed to be uſed with caution; and is declared not to intitle any party to demand, of right, an appeal to the provincial court, in caſes wherein the judgments of the zillah and city courts are proviſionally made final. To obviate conſiderable delay in the determination of appeals from deciſions of the native commiſſioners, and regiſters, when the zillah or city judge may be abſent from his ſtation, or, from whatever cauſe, there may be no judge, or perſon authorized to officiate as ſuch, on the ſpot; as well as when the regiſter may be authorized to officiate as judge, and is conſequently reſtricted from

R. XLIX, 1803, § XXIV. Diſcretion veſted in provincial courts to admit a ſpecial appeal, in all caſes wherein a regular appeal may not lie to them.

Caution to be obſerved in the exerciſe of this diſcretion.

R. II, 1805, § XIV. In what caſes provincial courts may remove, to thoſe courts, appeals depending in the zillah or city courts.

from hearing any appeals from judgments paſſed by himſelf as regiſter; the provincial courts are further empowered, (by the third clauſe of Section XIV, Regulation II, 1805) in all ſuch caſes, upon repreſentation by either of the parties, to remove the appeal from the zillah or city court in which it may be depending; and to proceed thereupon as in other appeals before the provincial court.

R. V, 1798, § VII. R VII, 1799, § XVIII. R. XXVIII, 1803, § XXXV. Reſtriction of appeals from judgments on ſummary proceſs, in caſes of forcible diſpoſſeſſion, or arrears of rent.

THE ſtated limitation of appeals to the provincial courts is ſubject to a further reſtriction, with reſpect to the ſummary proceſſes authorized by the regulations, in caſes of forcible diſpoſſeſſion, or arrears of rent. The judgments given by the zillah and city courts in ſuch proceſſes being ſubſidiary to a regular ſuit in thoſe courts, no appeal from them to the provincial courts is admiſſible, unleſs the ground of appeal be the irrelevancy of the regulations, which authorize a ſummary proceſs, to the caſe appealed. After receiving the appeal, the provincial court are to diſmiſs it, with coſts, if the ſtated ground of irrelevancy ſhall not appear eſtabliſhed; or, if the regulations referred to appear inapplicable to the caſe, they are to reverſe the irregular judgment given by the zillah or city court; and to paſs ſuch order thereupon as they may think juſt and proper. But it is provided that the above reſtriction ſhall not be underſtood to preclude the regular appeal, in caſes wherein land or crops may be adjudged by the zillah or city courts to be forfeited to government, under the penalties already mentioned for employing an armed force to take or keep poſſeſſion of diſputed property. The vakeel of government is to ſue for ſuch forfeitures in the dewanny adawlut; and the judgment paſſed thereupon is ſubject to the general rules for appeals, as well as to the particular proviſions reſpecting judgments of forfeiture in caſes of reſiſtance to the proceſs of the zillah and city courts.

Admiſſible upon irrelevancy of the regulations only.

But this reſtriction not meant to preclude a regular appeal in caſes of forfeiture to government, for employing an armed force.

Such forfeitures how to be ſued for.

R. V, 1793, § XI.

IT being a general rule for the trial and determination of all

R. IV, 1803, § XI. General rule of proceeding for the provincial courts. To be guided by the rules prescribed for the zillah and city courts.

all ſuits and appeals before the provincial courts, that they are to proceed, except as to hearing witneſſes and receiving evidence, "in the ſame manner and with like powers and au- "thority, and ſubject to the ſame reſtrictions, limitations, and "exceptions, as are preſcribed to the zillah and city courts;" it will be ſufficient to notice the principal additional rules, which have been enacted for receiving, trying and deciding, appeals to, or other matters cognizable by, the provincial courts.

R. V, 1793, § XII. R. XII, 1797, § IV. R. IV, 1803, § XII. R. II, 1805, § XII. Petitions of appeal, what to contain, and where to be preſented.

In all caſes appealable, under the regulations, to the provincial courts, the petition of appeal, ſtating particulars of the decree appealed againſt, and aſſigning ſome cauſe, ſpecial or general, for appealing from it, was originally allowed to be preſented either to the court in which the decree had been paſſed; or to the court of appeal. But this option having been found productive of delay in the admiſſion of appeals, from the neceſſity of frequent references for information, it was revoked by Regulation XII, 1797; and all perſons deſirous of appealing to the provincial courts, or to the ſudder dewanny adawlut, were required to preſent their petitions of appeal, in the firſt inſtance, to the court wherein the decree appealed againſt might have been paſſed; which court, in the event of its rejecting the petition, on whatever ground, was directed to furniſh a copy of its order of rejection to the appellant; who was declared at liberty to preſent his petition of appeal, with ſuch order, or a declaration that it was applied for, and not obtained, to the provincial court or ſudder dewanny adawlut. The abſolute revocation of the option firſt given having produced inconvenience and hardſhip, however, in particular caſes, wherein the parties were not fully adviſed of the rules referred to, it has been recently provided, by Section XII, Regulation II, 1805, "that the "court of ſudder dewanny adawlut and the ſeveral provin- "cial courts of appeal may, in any particular caſe, if they

"ſee

" ſee reaſon for ſo doing, receive and admit petitions of ap-
" peal in caſes appealable to them under the regulations;
" inſtead of requiring the appellant to preſent his petition
" of appeal, in the firſt inſtance, to the court in which the
" judgment appealed from may have been paſſed." It is alſo provided by Section XXIV, Regulation XLIX, 1803, and Section X, Regulation II, 1805, that any petitions for the ſpecial appeal authorized by thoſe ſections are to be preſented to the provincial courts and ſudder dewanny adawlut reſpectively.

R. XLIX, 1803, § XXIV. R. II, 1805, § X. Petitions for ſpecial appeals where to be preſented.

The petition of appeal, (wherever it may be preſented) is to be accompanied, in all caſes, with an atteſted copy of the decree appealed from, or a written declaration that ſuch copy was applied for ten days after the deciſion, and was denied. It muſt alſo be accompanied (if not preferred in *formâ pauperis*) with the preſcribed inſtitution fee; and with ſecurity for the payment of any coſts that may be awarded on the appeal, including the fees of the appellant's pleader, if he ſhall intend to employ one for proſecuting his appeal.

What to accompany the petition of appeal, in all caſes.

R. VI, 1797, § VI, and VII. R. II, 1798, § IX, and X. R. IV, 1803, § XII. R. XLIX, 1803, § VI, and VII.

The petition, fee, and ſecurity, are to be preſented within three months * after the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel; and it is declared, that the preſenting a petition of appeal before the expiration of the time limited, without the preſcribed inſtitution fee and ſecurity for coſts, or proof of inability to furniſh the ſame, (under the rules hereafter mentioned for paupers) ſhall not be conſidered to preſerve the appellant's right of appeal.

R. II, 1805, § VIII. Time limited for preferring appeals.

But the court of appeal is, in all caſes, authorized to admit the appeal after the expiration of the preſcribed period, if the appellant can ſhew juſt and reaſonable cauſe, to their ſatisfaction, for not having preferred it within the time limited; recording their reaſons for admitting it in ſuch caſes. If the,

But courts of appeal may admit them, after preſcribed period, on ſufficient cauſe.

* Three calendar months are ſpecified in the regulations; and the ſudder dewanny adawlut, in a caſe before that court on the 26th September 1797, declared their opinion that three months of the Engliſh calendar were intended, but as the regulations do not expreſsly ſtate Engliſh months, and the appellants had preferred their appeal within three Bengal months, and pleaded ignorance of the Engliſh calendar; the court admitted their appeal.

appellant

R. V, 1793, § XII, and XIV. R. XIII, 1796. R. V, 1798. § III, to VI. R. IV, 1803, § XII.

In what manner, and under what ſecurity, the execution of decrees may be ſtayed during appeals.

appellant be deſirous of ſtaying the execution of the decree paſſed againſt him, during the trial of his appeal from it, he is further required to give good and ſufficient ſecurity, in a ſum equal to one year's produce of the property adjudged, if the decree be for land, or any deſcription of real property; or, in other caſes, in an amount equal to the ſum or value decreed; for the performance of the decree which may be paſſed upon the appeal. If ſuch ſecurity be given by the appellant at the time of preferring his appeal, or within a reaſonable period to be fixed for the purpoſe, the court, in which the decree appealed from may have been paſſed, is to ſuſpend the execution of it during the appeal; but to prevent an abuſe of this rule, and encouragement of litigious appeals, the courts of appeal, in all caſes wherein they may confirm the decree appealed from, are directed to adjudge intereſt at the rate of one per cent per menſem, on the amount receivable by the reſpondent under ſuch decree, from the date of it; and are alſo authorized to puniſh appeals which may appear litigious by a proportionate fine to government *. If the appellant ſhall not give ſecurity for ſtaying execution of the decree, and it ſhall conſequently be put in force againſt him, notwithſtanding his appeal; the preſcribed ſecurity is to be taken from the reſpondent, in whoſe favor the decree is executed for the due performance of whatever judgment may be paſſed on the appeal. The decree is not to be put in execution, during an appeal, without ſuch ſecurity †. But as caſes may occur

Proviſion to prevent an abuſe of this rule.

Security to be taken from reſpondent, if the decree be executed.

Lands adjudged to be held in

* On the 21ſt February 1798, the ſudder dewanny adawlut, upon a reference from the Calcutta provincial court, determined, that "if a party againſt whom a decree may be paſſed, and ordered "to be put in execution, allow the execution thereof to take place, either wholly or in part, with- "out preferring an appeal, and tendering the preſcribed ſecurity for ſtaying the execution of the "decree, he ſhould not afterwards be allowed to ſtay the execution." But it has been ſince ruled, that when the decree be for both land and money; and may have been enforced as far as reſpects the former only, when an appeal is preferred and ſecurity tendered; the execution of the pecuniary part of the judgment ſhould be ſuſpended during the appeal.

† Either party may object to the ſufficiency of the ſecurity offered by the oppoſite party; and all objections againſt the reſponſibility of ſureties claim conſideration, as well as any requiſite inveſtigation, if made before the ſecurity has been admitted. But the court of ſudder dewanny adawlut, in a caſe before it on the 27th March 1799, determined, that an objection not made at the time of admitting the ſecurity taken, and not founded upon ſubſequent circumſtances, was inadmiſſible after the ſecurity had been received and approved.

wherein

wherein neither the appellant nor the reſpondent may be able to give the preſcribed ſecurity, it is provided that, in ſuch caſes, the property adjudged, (viz. any landed property, the right or poſſeſſion of which may be transferred by the judgment appealed from,) ſhall be held in attachment during the appeal, or until ſuch time as one of the parties may be able to give the required ſecurity, by the collector of the diſtrict, wherein the land may be ſituated, at the expenſe of the party who may be ultimately declared entitled thereto. The courts of appeal are further authorized, when from delay in the deciſion upon appeals the ſecurity firſt given may appear inſufficient, to require any additional ſecurity which they may deem neceſſary; and in default of its not being given within a reaſonable period, to proceed in like manner as if no ſecurity had been given in the firſt inſtance. It may be added that any private transfer or mortgage of property included in a judgment appealed from, whilſt the appeal is depending, is declared to be null and void, if the ultimate judgment ſhall be againſt the party who may have transferred or mortgaged the ſame during the appeal; and that proviſion is alſo made to ſecure the rights of reſpondents, as far as poſſible, in the event of any property adjudged to them, but left in the appellant's poſſeſſion, being ſold by government, whilſt the appeal is pending, or before the final judgment be put in execution, to make good an arrear of the public aſſeſſment; for which all lands, by whomſoever poſſeſſed, are held anſwerable, in preference to any other claims thereupon *.

attachment by the collector, if neither party can give ſecurity, during the appeal.

In caſes of delay, additional ſecurity may be required, if that firſt given appear inſufficient.

R. V, 1798, § IV, and V R IV, 1803, § X V.

Private transfers and mortgages of adjudged property, during appeals, declared null and void.

And further proviſion made for ſecuring, as far as poſſible, the rights of reſpondents in event of a public ſale for arrears of aſſeſſment.

WHEN a petition of appeal and its required accompaniments

R. V, 1793, § XII, and XIV.

* The tax upon land is the indefeaſible right of government, or rather of the public body repreſented by it; and cannot be affected by any private alienation or aſſignment. But in the caſe ſtated, it is provided, that if the land ſold be purchaſed by the reſpondent, he ſhall be entitled, on a final judgment in his favor, to recover from the appellant his purchaſe money, and all expenſes, with intereſt thereupon; or the purchaſe money and intereſt, if the land be publickly ſold to any other perſon; or the land itſelf, with all the profits ariſing therefrom, if it be proved to have been directly or indirectly purchaſed by the appellant.

are

R. XII, 1797, § III. R. IV, 1803, § XII, and § XIII. Zillah or city court, how to proceed, when the cauſe is appealable, and the petition of appeal duly preſented, with its required accompaniments.

are delivered, within the preſcribed period, to the zillah or city court; and the cauſe is clearly appealable to the provincial court; the judge receiving the petition of appeal is to tranſmit it (with a copy of the decree appealed from; an extract from his proceedings ſhewing the performance of the conditions of appeal; and information whether the decree has been put in execution, or othewiſe;) to the provincial court; and is at the ſame time to cauſe notice in writing to be given to the appellant that, within fifteen days, the proceedings held in the cauſe will be certified to the provincial court; and that if he ſhall not proceed in the appeal within ſix weeks after the petition of appeal ſhall have been filed in the provincial court, his appeal will be diſmiſſed; unleſs he ſhall ſhew reaſonable cauſe, to the ſatisfaction of that court, for not having proceeded in it *. The judge is further directed, within fifteen days after the receipt of the appeal, to certify under his hand and official ſeal, to the regiſter of the provincial court, the record duly made up and authenticated; including the original complaint, anſwer, replication and rejoinder; the depoſitions, exhibits, and every other original paper read in the cauſe: keeping atteſted copies thereof, as records of the zillah or city court. If any original paper cannot be tranſmitted, from having been entered in a book relating to other cauſes; or from its being loſt or miſlaid; an authenticated copy, or tranſcript of the entry, of ſuch original paper, is to be certified to the provincial court. This rule however applies only to caſes in which the appeal may have been regularly preferred to the zillah or city judge, within the preſcribed period, and he may enter-

In what caſes the zillah or city judge may reject the petition of appeal; furniſhing the

* The preſcribed written notification to the appellant muſt be given in all caſes; although he may be verbally informed of the admiſſion of his appeal; or may know it from his vakeel; and an omiſſion of the notice required by the regulations will ſave the appellant from diſmiſſion of his appeal for non-attendance to proſecute it. This was determined by the court of ſudder dewanny adawlut in a caſe before it (KRISHN DUT, verſus KAHAR SINGH,) on the 6th July 1796.

tain

tain no doubt that the cauſe is appealable under the regulations. If it appear to him not to be appealable, or if the petition of appeal be not delivered to him, as required, within the time limited, he may reject the petition; furniſhing the party with a copy of his order of rejection; and wait inſtructions from the provincial court.* On receipt of the petition of appeal by the provincial court, (whether tranſmitted to it by the zillah or city judge, or preſented to it by the appellant or his vakeel,) if the appeal be admitted, a ſummons is iſſued to the reſpondent, through the judge of the court in which the cauſe may have been tried; who is at the ſame time required to certify the record of the original trial, if the petition of appeal ſhall not have been received from him in the firſt inſtance. If the reſpondent is not to be found, or from whatever cauſe the ſummons cannot be ſerved upon him, the judge is to proceed by proclamation, in the ſame manner as already ſtated with regard to defendants in the zillah and city courts, upon whom a ſummons cannot be ſerved; and if, after ſuch proclamation, the party ſhall not appear as required, either in perſon or by vakeel, the provincial court is to try and determine the cauſe *exparte*, in the ſame manner as if the reſpondent had appeared.

party with a copy of his order of rejection.

R. V, 1793, § XV, and XVI. R. IV, 1803, § XV, XVI, and XVII. In what manner the provincial court proceeds on receiving a petition of appeal.

And proceſs againſt reſpondents upon whom the ſummons cannot be ſerved.

In what caſe the appeal to be tried *exparte*.

THE provincial courts are empowered, in caſes which may appear to them not to have been ſufficiently inveſtigated in the zillah or city court, or for any other cauſe that may be deemed reaſonable by them, either to receive ſuch further evidence as they may think neceſſary for the juſt determination of the ſuit, and give judgment thereupon; or to refer the ſuit back to the court in which it originated, with ſpecial directions to the judge regarding the new evidence he is to receive reſpecting it; as may be deemed by the court moſt conducive to juſtice and the convenience of the parties and

R. V, 1793, § XVIII, XIX and XX. R. IV, 1803, § XVIII, XIX and XX. Authority of the provincial courts in caſes which may appear not to have been ſufficiently inveſtigated.

* This is not expreſsly ſtated in the regulations; but is clearly inferable from the rules preſcribed.

witneſſes;

witneſſes; recording in every caſe their reaſons for exerciſing the power thus veſted in them.* If the provincial court judge it proper to receive further evidence themſelves, they are authorized, either to examine the witneſſes produced, *vivâ voce*, in open court; or to direct their regiſter to take the depoſitions of the witneſſes, in the preſence of the appellant and reſpondent, or their vakeels; who are to be at liberty to put any queſtions they may think proper; and the examination, including ſuch queſtions and the anſwers to them, is to be reduced into writing, ſigned by the deponents, and authenticated by the regiſter. In diſpenſing with the oaths of particular witneſſes, or examining them by commiſſion; as well as

Further evidence how to be taken, is received in the provincial court.

Powers of provincial courts the ſame as thoſe of zillah and

* In referring a ſuit back to a zillah or city court for further inveſtigation, the provincial court may either direct the judge, after taking the further evidence required, to tranſmit it to the provincial court for their deciſion thereupon; as is uſually done, for the purpoſe of expediting a final deciſion upon the caſe, when a judgment upon the merits may have been given in the original court; and ſome particular point only remains to be further inveſtigated: or may inſtruct the zillah or city judge to paſs a ſecond deciſion upon the further evidence to be taken by him, ſubject to a ſecond appeal to the provincial court; as authorized by the regulations, whenever the ſuit may have been diſmiſſed on the original trial upon the ground of ſome default, without inveſtigation of the merits of the caſe. If the ſuit have been irregularly inſtituted in the zillah or city court, as in the caſe of a ſuit againſt government, not inſtituted in the mode preſcribed by Section XI, Regulation III, 1793, and conſequently tried and determined without the communication to, and order from, the Governor General in Council, required by that ſection; the provincial court (as well as the ſudder dewanny adawlut in ſimilar caſes) may nonſuit the Plaintiff, on the ground of ſuch irregularity; and direct him to prefer his claim *de novo* in the manner preſcribed by the regulations. But if the ſuit have been regularly preferred in the zillah or city court, the provincial courts are not authorized, upon an appeal from the original deciſion, or the ſudder dewanny adawlut upon an appeal from the judgment of the provincial court, to direct that the plaintiff's claim be inſtituted *de novo*. This was determined by the court of ſudder dewanny adawlut in the caſe of HURPURSHAD DOBEE verſus BIRJBASHEEMUL, on the 7th September 1796. It may be uſeful to add that, in the caſe of Rajah MAHANUND appellant againſt GHOLAM SUFDUR, the former conteſted the authority upon which the latter commenced an action againſt him in the court of zillah Moorſhedabad; and having appealed to the provincial court againſt an order of the zillah judge for admitting ſuch authority, the ſudder dewanny adawlut, upon a reference from the provincial court whether ſuch interlocutory appeal were admiſſible, determined, on the 1ſt March 1798, that it ſhould be admitted. The court, at the ſame time, expreſſed their concurrence in opinion with the provincial court, that "it is not, in "general, neceſſary or proper to interfere with the proceſſes of the zillah courts, reſpecting de"pending ſuits;" but remarked that "in particular caſes, ſuch as the preſent, wherein the de"fendant objects to the authority of the plaintiff to inſtitute the ſuit againſt him, and when an "appeal may be preferred againſt the deciſion paſſed in the zillah court upon ſuch preliminary "objection, an immediate and final deciſion thereupon, by the courts of appeal, is obviouſly "deſirable for all the parties concerned; and appears to the court conſiſtent with the mean"ing and intention of the regulations, as conducive to the ends of juſtice."

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in proceeding againſt any witneſs who may refuſe to be ſworn, or to give evidence, or to ſubſcribe his depoſition; or who may be guilty of wilful and corrupt perjury; and generally in all caſes provided for by the rules before ſtated for the zillah and city courts; the ſame powers are veſted in the provincial courts of appeal. The ſtated penalties, for reſiſtance to any proceſs of the zillah or city courts; are alſo extended to all ſimilar reſiſtance of any proceſs, rule, order, or decree, which may be iſſued from a provincial court. The only further ſpecial proviſion relative to appeals to the provincial courts, which it appears requiſite to notice, is that, if the appeal be preferred againſt a deciſion founded upon an award of arbitration, it is to be diſmiſſed with coſts, unleſs it be fully proved, by the oaths of two credible witneſſes that the arbitrators have been guilty of groſs corruption or partiality in the cauſe. It is however neceſſary to obſerve upon the rule contained in Section XXI, Regulation V, 1793; (and Section XXI, Regulation IV, 1803, for the ceded provinces,) whereby the provincial courts are authorized to diſmiſs an appeal which the appellant may not proceed in for ſix weeks, unleſs he ſhall ſhew reaſonable cauſe for not proceeding in it; that the option which the plaintiffs in the zillah and city courts have, in caſes of nonſuit, to inſtitute a new ſuit, does not extend to appeals diſmiſſed for non-proſecution or other default; which may indeed be revived, upon ſufficient cauſe ſhewn to the ſatisfaction of a ſuperior court of appeal; but cannot, under any exiſting regulation, be renewed by a ſecond appeal in the ſame cauſe. The explanation given by the ſudder dewanny adawlut to the zillah and city courts, (that before the judgment of nonſuit be paſſed, againſt a party neglecting for ſix weeks to perform any act required from him in the proſecution of the ſuit, he ſhould be called upon to ſhew cauſe for not having proceeded in it) is therefore not only equally applicable to the nonſuit of appellants, for neglect in the proſecution of their appeals; but demands the moſt

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city courts in diſpenſing with oaths, and other caſes provided for by the regulations.

R. V, 1793, § XXIII, and XXVI.
R IV, 1803, § XXIII, and XXVI.
Penalties for reſiſting proceſs of provincial courts, the ſame as for reſiſtance to proceſs of the zillah and city courts.

R. V, 1793, § XXVIII
R IV, 1803, § XXVIII.
In caſes of arbitration, appeal to be diſmiſſed, with coſts, unleſs the corruption or partiality of the arbitrators be proved.

R V, 1793, § XXI.
R. IV, 1803, § XXI.
Remark upon power veſted in the provincial courts to diſmiſs appeals not proceeded in for ſix weeks.

ſtrict obſervance from every court of appeal, to obviate the injurious conſequences that muſt enſue, if the party ſhould not, by wilful neglect, have juſtly ſubjected himſelf to the penal diſmiſſion of his appeal with coſts.*

R. III, 1793, § XIX. R. V, 1793, § IX. R. III, 1803, § XIX. R. V, 1803, § IX.

Prohibition of correſpondence, by letter, between provincial, zillah, and city courts, relative to depending cauſes or other judicial matters, and mode of communication to be obſerved by them reſpectively.

It has already been remarked that the provincial courts, in common with the zillah and city courts, are prohibited from correſponding by letter with the parties in any ſuits, or matters, within their cognizance. They are alſo prohibited from correſponding by letter with each other, reſpecting any depending cauſe, or upon any matters on which they may not be ſpecially empowered to correſpond. When a zillah or city judge ſhall have occaſion to communicate to a provincial court any information that may be required from him by the court; or which he may deem it neceſſary to ſubmit reſpecting any cauſe or matter that may be before it; he is to certify it to the court by a writing under his official ſeal and ſignature. When a provincial court ſhall have occaſion to iſſue an order to the judge of any zillah or city court, or to require information from him on the ſubject of any ſuit or matter before them, they are to iſſue a precept under the ſeal of the court, and the ſignature of their regiſter, commanding him to execute the order, or requiring him to furniſh the information, and the judge to whom the precept may be directed, is to perform the exigence of it, or return good and ſufficient reaſon why he has not done it. All proceſs to parties and witneſſes, and every rule or order whatever, which may be iſſued by the provin-

R. V. 1793, § XV. R. IV, 1803, § XV, Proceſs to par-

* Appeals are frequently withdrawn, and the inveſtigation of them diſcontinued, upon a compromiſe between the parties; who deliver to the court, in ſuch caſes, deeds of agreement and acquittance denominated *Rázeenámah*, and *Sáſeenámah*. An application to revive an appeal ſo diſcontinued, on the ground of the conditions, upon which the *Rázeenámah* had been granted by the appellant, not having been fulfilled by the reſpondent, was refuſed by the ſudder dewanny adawlut, in the appeal of Gudadhur Mitr, verſus Moorleedhur Mitr, on the 14th December 1796; as in this caſe, the appellant might have a new action againſt the reſpondent. But to ſave the expenſe and delay of a new ſuit; as well as to encourage the amicable adjuſtments of parties; whenever the deeds of agreement, on which an appeal may be withdrawn, ſpecify diſtinctly the terms of compromiſe, it may be juſt and expedient to enforce them, as in execution of a decree of court.

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cial courts, reſpecting caſes depending before them, or the execution of decrees paſſed by them, is to be written or printed in the Perſian and Bengal languages, in Bengal and Oriſſa; or in the Perſian and Hindooſtanee languages in the other provinces; to be ſealed with the ſeal of the court; and ſigned by the regiſter: all ſuch proceſs, rules, and orders, to be ſerved or executed on any parties, witneſſes, or other perſons, not being in actual attendance on the provincial court, are to be directed to the judge of the zillah or city court, in which the cauſe may have originated; or in whoſe juriſdiction the diſputed lands may be ſituated; or the parties may reſide. Every proceſs, rule, and order is to limit a certain time in which it is to be ſerved, executed, and returned to the provincial court. If the judge of a zillah or city court to whom any proceſs, rule, or order, may be directed, ſhall wilfully diſobey, or neglect to perform, the commands contained in it; or ſhall make a falſe return; the provincial courts are enjoined to make an immediate report of ſuch diſobedience, neglect, or falſe return to the ſudder dewanny adawlut; which court is authorized to ſuſpend the judge, ſo offending, from his office; and is required to notify the ſuſpenſion, with all relative proceedings, and papers, within ten days, for the determination of the Governor General in Council *.

ties and witneſſes, and all judicial orders of provincial courts, in what language to be written, or printed.

And in what manner to be iſſued, ſerved, and executed.

Report to be made to, and power of ſuſpenſion veſted in, court of ſudder dewanny adawlut, in caſes of diſobedience, neglect, or falſe return, by any zillah or city court.

"If

* A queſtion having ariſen as to the language, in which precepts ſhould be iſſued by the courts of appeal to the judges of the zillah and city courts, it has been explained and directed by a circular order from the ſudder dewanny adawlut, under date the 12th October 1803, that all proceſs to parties and witneſſes, as well as all decrees and orders of court, reſpecting cauſes or other judicial matters, which, according to the regulations, muſt be written in the native languages, are to be encloſed in an Engliſh precept from the provincial court; and that the zillah and city judges, when they have any information to certify to the provincial courts, or to the ſudder dewanny adawlut, or any return to make to them, relative to cauſes, or any matter of judicial cognizance, are to tranſmit an Engliſh certificate, or return, with a copy of their Perſian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of orders. This rule of practice had before been adopted by the ſudder dewanny adawlut in its communications to the provincial courts; and was directed, on the 20th April 1801, to be obſerved by the latter in any certificates or returns they might have occaſion to tranſmit to that court. The provincial, zillah, and city courts were further inſtructed, on the 12th October 1803, to obſerve the ſame mode of communication in any applications they may have to make to each other, or to the collectors, or other European officers of government, for papers, information, or any other purpoſe; in which caſes copies of,

R. V, 1793, § X. R. IV, 1803, § X. Charges of corruption, preferred to a provincial court, againſt the judge of a zillah or city court, how to be proceeded upon.

"If any perſon ſhall charge the judge of a zillah or city "court, before the provincial court of the diviſion, with "having been guilty of corruption in oppoſition to his oath; "the provincial court is to receive the charge, and forward "it to the ſudder dewanny adawut, provided the com- "plainant ſhall previouſly make oath to the truth of the "charge; (or ſubſcribe the required declaration, if he be "of the deſcription of perſons whom the court is empowered "to exempt from taking an oath;) and give ſecurity, in what- "ever ſum the court may judge proper, to appear, and pro- "ſecute the charge, when required." In all other caſes, not expreſsly provided for, when it may appear to the provincial courts, that the judges of the zillah or city courts have been guilty of negligence or miſconduct in the diſcharge of their duty, they are to report the circumſtances to the ſudder dewanny adawlut, which court is directed to proceed thereupon, or upon charges of corruption againſt a zillah or city judge, in the manner hereafter ſtated. The object of theſe proviſions, whereby the provincial courts are reſtricted from the exerciſe of any perſonal authority over the judges of the zillah and city courts, is to maintain the high reſpect due, in every ſtation, to the judicial office and character; whilſt, at the ſame time, a ſtrict obſervance of the regulations is provided for by the power veſted in the courts of appeal; and the ſubordination, indiſpenſibly requiſite in every department of the public ſervice, is preſerved for the courts of juſtice in general by the authority delegated to the ſudder dewanny

Provincial courts how to proceed in other caſes, when the zillah and city judges may appear guilty of negligence or miſconduct.

of, or extracts from, their Perſian proceedings, containing the ſubſtance of the application, are to be encloſed in a ſhort Engliſh addreſs, requeſting compliance with the contents; or if it be a caſe in which the court is directed, or empowered, to iſſue an order and precept to any European officer of government, the Perſian copy of ſuch order, or an extract from the proceedings containing it, is to be encloſed in an Engliſh precept, under the ſeal of the court, and ſignature of the judge or regiſter, requiring performance of the order ſo tranſmitted within a limited time; or that ſufficient cauſe be aſſigned within ſuch period why the order is not put in execution. The object of theſe inſtructions is not only to maintain the reſpect due to the European officers of government; which it is difficult to preſerve in a Perſian order, or application, directly addreſſed to them; but alſo to complete the record of every civil cauſe in the preſcribed language, by having all orders, applications and returns, recorded at length in the original proceedings, and documents of the cauſe.

adawlut;

adawlut; and the ſuperintending control of His Excellency the Governor General in Council.

THE provincial courts are further empowered "to try and "determine in the firſt inſtance, any ſuit or complaint, or "any matter whatever of a civil nature, which may be tranſ- "mitted to them for that purpoſe by the Governor General "in Council, or by the ſudder dewanny adawlut;" alſo "to "receive any original ſuit or complaint, which may be cog- "nizable in any zillah or city court within their reſpective "juriſdictions; and to command the judge of ſuch court "to receive the ſuit, or complaint, and proceed to hear and de- "termine it; provided proof ſhall be previouſly made to their "ſatisfaction, that the judge refuſed or omitted to receive or "proceed in it;" and laſtly, "to receive any petitions reſ- "pecting ſuits or matters that may be depending or have "been decided in any zillah or city court, within their reſ- "pective juriſdictions; and provided it ſhall be proved to "their ſatisfaction that the petition was preſented, or that "due means were uſed to effect its being preſented, to the "judge, and that he refuſed or omitted to receive it, and "proceed on it; or in the laſt mentioned caſe that undue "means were uſed by any of the officers of the court to "prevent the petition being preſented; the provincial court "are empowered to iſſue a precept, under the ſeal of the "court and atteſted by the regiſter, commanding the judge "to receive the petition, and to proceed reſpecting it ac- "cording to the regulations."

R. V, 1793, § VI, and VII. R. II, 1798, § V, and VI. R. IV, 1803, § VI, VII, and VIII. Further power of the provincial courts to try ſuits referred to them by government or the ſudder dewanny adawlut. To receive and order the trial of ſuits cognizable in the zillah and city courts, in certain caſes.

And to receive and direct the regular proceeding upon petitions reſpecting matters depending in the zillah and city courts, under certain proviſoes.

THE public utility and importance of the provicial courts, which have been thus eſtabliſhed, for the ſuperviſion of the courts of original juriſdiction; and to receive appeals from their deciſions, in every caſe wherein the ſuit may not have been already heard in appeal by the zillah or city judge, after being originally tried by his regiſter, or a native commiſſioner; as well as in all caſes heard by the judge in ap-

Concluding obſervation on the utility and importance of the provincial courts of appeal.

peal

peal from his regiſter's deciſion, if the latter be reverſed or altered by the ſecond judgment, and the amount or value, adjudged or diſallowed, exceed one hundred ſicca rupees; cannot require any lengthened comment, after what has been ſtated of the conſequences ariſing from the want of local courts of appeal, before theſe were conſtituted. It will be ſufficient to quote the words of the illuſtrious Perſonage by whom they were propoſed *. "Theſe courts will be the "great ſecurity to government for the due execution of the "regulations; and the barriers to the rights and property of "the people. Their deciſions will command reſpect; and "at the ſame time that they will give ſecurity to property, "and afford protection to the people, their weight and in-"fluence will contribute greatly to the vigor and ſtability of "our internal government. A great part of the property of "the country will be held under their decrees; and their "deciſions on caſes, and the rights of individuals, will in "many inſtances, in courſe of time, have the force of law.

* From the public minute of Marqueſs CORNWALLIS, recorded on the 11th February 1793. The following extract from the ſame comprehenſive record, (which is appealed to as forming the baſis of the ſyſtem eſtabliſhed in 1793,) ſtates preciſely the degree of control intended to be exerciſed by the provincial courts over the judges of the zillah and city courts. "From the very reſpectable footing on which the judicial officers are propoſed to be placed, and the care which, it is to be preſumed, will always be taken to ſelect perſons who are beſt qualified, by abilities and integrity, to fill them, I am perſuaded that inſtances of corruption, or other miſconduct, in any of the judges, will rarely occur. It is neceſſary however, upon general principles, that ſuch caſes ſhould be provided againſt, and the following meaſures appear beſt calculated for the purpoſe. The provincial courts of appeal ſhould be empowered to receive any charges that may be preferred to them againſt the judges of the zillah or city courts. But to prevent the characters of theſe judges being wantonly aſperſed, rules ſhould be laid down to deter people from making groundleſs accuſations. The provincial courts ſhould not be permitted to make any inquiries, in the firſt inſtance, into the charges that may be preferred againſt the zillah or city judges; but ſhould be directed to forward them to the ſudder dewanny adawlut. This court ſhould iſſue a ſpecial commiſſion to the provincial courts to make ſuch enquiries and to take ſuch evidence reſpecting the charges as it may think adviſable. The obſervance of this formality will be eſſential. It will not obſtruct the bringing forward of well founded complaints: at the ſame time it will operate to deter people from preferring groundleſs charges. To delegate to the provincial courts of appeal a power to enquire into ſuch charges, without a previous reference to the ſudder dewanny adawlut would, in fact, be making the judges of the zillah and city courts perſonally ſubject to their authority. This would ſoon deprive the zillah and city judges of all weight and conſequence in the eyes of the people, and leſſen that reſpect with which, it is neceſſary, they ſhould look up to their deciſions. The judges of the provincial courts ſhould poſſeſs no authority over the judges of the zillah and city courts perſonally. Their control over them ſhould be only that of a ſuperior court, empowered to reviſe their decrees, when regularly brought before them in appeal."

FROM

FROM all decrees of the provincial courts, for landed property exempt from the public aſſeſſment, the annual produce of which might exceed one hundred ſicca rupees; or for lands paying revenue to government, the produce of which might exceed one thouſand ſicca rupees per annum; or for any other deſcription of real property, or for money or other perſonal property, the value or amount of which might be more than one thouſand ſicca rupees; an appeal was allowed, by Regulation VI, 1793, to the court of ſudder dewanny adawlut; conſiſting of His Excellency the Governor General, and the Members of the Supreme Council; with the cauzy-ool-cuzzaut, or head cauzy, two mooſties, or expounders of the Mahomedan law, two pundits verſed in the Hindoo law, a regiſter, aſſiſtants, and other miniſterial officers. But the appeals preferred in conſequence being found to occupy too much of the court's time, with ſuits for perſonal property below five thouſand rupees; which prevented the deciſion of cauſes of greater magnitude; the decrees of the provincial courts were, by Regulation XII, 1797, declared final for money, or perſonal property, not exceeding in amount or value, the ſum of five thouſand ſicca rupees. This limitation proving inſufficient to anſwer effectually the purpoſes intended by it; and the experience which the provincial courts had obtained, in the inveſtigation of ſuits for landed and other real property, appearing to render it unneceſſary to continue the diſtinction made in the rules for appeals, between perſonal property and its equivalent value in real property, the decrees of the provincial courts were, by Regulation V, 1798, made final "for landed or other real property, not exceed-
"ing in value the ſum of five thouſand ſicca rupees, accord-
"ing to the uſual mode of eſtimating the value of ſuch pro-
"perty; viz. if the land be malgoozarry (paying revenue to
"government,) the annual produce of which, as deſcribed in
"Section III, Regulation IV, 1793, may not exceed five thou-
"ſand ſicca rupees per annum; or if the land be lakheraj
"(exempted

R. VI, 1793, § X.
R. XII, 1797, § II.
R. V, 1798, § II.
In what caſes an appeal was formerly allowed to the ſudder dewanny adawlut.

Limitation of appeals to that court by Regulation XII, 1797.

Further limitation by Regulation V, 1798.

" (exempted from the payment of revenue to government,) " the annual produce of which, as deſcribed in the above- " mentioned regulation, may not exceed five hundred ficca " rupees per annum; or if the property adjudged be a houſe, " tank, garden or real property of any other deſcription than " the foregoing, the computed value of which may not ex- " ceed the ſum of ficca rupees five thouſand.*" It was at

* The proportion of the public aſſeſſment, to the rent produce of lands ſubject thereto, having been eſtimated, before the land tax was fixed in perpetuity, at nine-tenths of the entire rents of each eſtate, (or ten-elevenths, in ſome caſes, as before ſtated,) after deducting the expenſes of management; and the general valuation of lands being a ten years purchaſe of the annual profit derivable from them; the value of *Malgoozary* lands, paying revenue to Government, has been computed as equal to the entire rent produce of one year; (equivalent to the proprietor's income for ten years, after deducting the charges of management and tax on his eſtate;) but as *Lakheraj* lands, held exempt from the public aſſeſſment, are not chargeable with any tax to government, their value is computed at ten times their neat annual rent product. A deſcription of lands called *Malgoozary Aima*, the aſſeſſment upon which is uſually about one-third of their produce, not being exactly within either of the above deſcriptions, (malgoozary or lakheraj) it has been determined by the ſudder dewanny adawlut (on the appeal of AZIM-OO-DEEN verſus FATIMA BIBBY, 7th September 1796;) that ſuch lands, with reſpect to the right of appeal from deciſions reſpecting them, ſhould be valued at ten times their neat rent produce, after deducting the amount of the tax aſſeſſed upon them. It has alſo been adjudged by the ſudder dewanny adawlut (in caſes before them on the 27th September 1797, and 21ſt November 1798,) that if lands be claimed by a plaintiff as malgoozary, and be alleged in the defendant's anſwer to be lakheraj; or *vice verſa*, if claimed as lakheraj and defended as malgoozary; and the judgment in either caſe be for the plaintiff; an appeal therefrom ſhould be allowed to the defendant; if a valuation of the lands as lakheraj be ſuch as to render the cauſe appealable. A plaintiff, whoſe claim to lakheraj land, of appealable value, may be diſmiſſed, is alſo of courſe intitled to an appeal under the general rule ſtated, although the judgment againſt him ſhould declare the land to be malgoozary. But a caſe wherin the original plaintiff (KALEEPURSHAD NAG,) claimed lands, producing leſs than one hundred rupees per annum, as malgoozary, and his claim, decided in his favor by the zillah regiſter, was diſmiſſed on an appeal to the zillah judge, whoſe decree ſtated the land in diſpute to be the lakheraj tenure of the original defendant, the provincial court rejected a further appeal, deſired by the plaintiff, as not authorized by Section VIII, Regulation XLIX, 1793; and the ſudder dewanny adawlut (on the 27th April 1803) confirmed the rejection of the appeal, under the limitations preſcribed by that regulation. The difference between this caſe, in which the plaintiff was debarred from an appeal by his own ſtatement of the cauſe of action, and that of a defendant pleading a malgoozary tenure in land adjudged to the plaintiff as lakheraj, is that, in the latter, an actual transfer of the property, as lakheraj, is made by the decree; whereas in the former a claim to malgoozary land only is diſmiſſed; and no transfer of property is made by the decree. The application, in the caſes ſtated, of the principle declared by the Regulations, may be more conciſely, and perhaps more clearly, expreſſed as follows. When the claim is originally for lakheraj land, of appealable value, either party is intitled to appeal, according to the ſtatement of the cauſe of action. But if the claim be for malgoozary land, not of appealable value, the plaintiff is barred from an appeal by his own ſtatement of the cauſe of action; though the defendant, alleging the land to be lakheraj, is aggrieved by a deciſion againſt him to an appealable amount, (ſuppoſing a valuation of the land as lakheraj to render the caſe appealable) and has therefore a right of appeal.

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the ſame time explained, by the two regulations laſt noticed, that although the original cauſe of action may have exceeded five thouſand ſicca rupees; if the decree of the provincial court be for an amount or value not exceeding that ſum; viz. either adjudging againſt the party deſiring to appeal money, or any deſcription of property, to an amount or value not exceeding five thouſand ſicca rupees, or diſallowing his claim to that amount or value only; the caſe is not appealable under the preſcribed limitation; "the amount adjudged "againſt the party deſiring to appeal; or the amount of his "claim diſallowed by the decree from which he may deſire "to appeal, being the ſtandard for determining his right to "appeal; whether to the ſudder dewanny adawlut from the de- "crees of the provincial courts of appeal; or to the provincial "courts from the deciſions of the zillah and city courts*." The above explanation and limitation of appeals to the ſudder dewanny adawlut have been ſince extended to the ceded provinces, by Regulations IV, and V, 1803; and are now in general

Explanation to determine the right of appeal when paſt only of the original claim, may be adjudged, or diſallowed.

R IV, 1803, § XXX.
R V, 1803, § X
Ceded Provinces.

* The ſame explanation was applicable to appeals from the deciſions of the zillah and city regiſters, before an appeal from them to the judge was allowed, in all caſes, by Regulation XLIX, 1803. It has been further declared by the court of ſudder dewanny adawlut (in a caſe before it on the 7th November 1798) that any intereſt (and of courſe any other meſneprofit) adjudged or diſallowed by the decree appealed againſt, ſhould form part of the amount upon which the inſtitution fee is to be calculated in caſes of appeal; and conſequently ſhould be included in determining the right of appeal according to the preſcribed ſtandard. But that coſts of ſuit, which do not form part of the claim at iſſue between the parties, and ariſe from payments to government, or to the pleaders in the cauſe, ſhould not be included, either in the calculation of fees, or of the ſtandard for appeals. In a caſe wherein two judgments had been given by a provincial court, one for the principal amount of a bond, the other for the intereſt; and each exceeding five thouſand rupees; the ſudder dewanny adawlut (on the 28th June 1798) declared two appeals to be neceſſary, as the two judgments had been given in ſeparate ſuits. In another caſe before the court, on the 5th November 1802, wherein an appellant (BHUNJUN SING) claimed a right of appeal from a judgment paſſed againſt him for rupees two thouſand ſix hundred and fifty ſeven, the rent for two years, of ſome villages, adjudged to be included in the leaſe of his under-farmer; on the plea that his leaſe to the under-farmer being for four years, he ſhould ultimately have to pay double the amount adjudged, which would exceed five thouſand rupees; the ſudder dewanny adawlut ſuſpended their admiſſion of the appeal, until a ſecond judgment ſhould be paſſed againſt him for the remainining period of the leaſe. When however the decree of a provincial court, by invalidating a deed for more than five thouſand rupees, or otherwiſe, has clearly appeared to involve a judgment againſt the appellant for an appealable amount, or value; although the ſum, or property, ſpecifically included in the decree, be leſs than five thouſand rupees; the court have conſidered it within the ſpirit and intention of the regulations to admit an appeal.

force,

R. II, 1801, § VIII. R. V, 1803, § X. R. XLIX, 1803, § XXVI.

force, with the following modifications. "In all cases wherein "an appeal may lie, under the existing regulations, to a pro- "vincial court of appeal, from the decision of a zillah or city "court, and in which the provincial court may have refused "to admit the appeal, on the ground of delay, informality, or "other default in preferring it; or after having admitted the "appeal, may dismiss it on the ground of some default, with- "out investigation of the merits of the case;" it is competent to the sudder dewanny adawlut to receive an appeal, whatever may be the amount or value at issue in the cause; and if it shall appear, on examination of the proceedings of the provincial court, that the appeal was rejected or dismissed by the latter on insufficient grounds, it may order the provincial court to receive the appeal, or to revive it if received and dismissed, and to try and determine it's merits, according to the regulations*. The power of admitting a special appeal, in all cases not regularly appealable, (if on the face of the decree, or from any information before the court, it shall appear erroneous or unjust, or from the nature of the cause, as stated in the decree, or otherwise, it shall appear of sufficient importance to merit a further investigation in appeal) which by Regulation XLIX, 1803, was vested in the provincial courts of appeal, has also been extended, by Regulation II, 1805, to the sudder dewanny adawlut, under the same restrictions, in the exercise of such discretionary authority, as were prescribed for the provincial courts.

Appeal open to sudder dewanny adawlut in all cases of default, whatever may be the amount or value.

R. II, 1805, § X.

That court also empowered to admit a special appeal, in cases not regularly appealable.

R. VI, 1793, § VII. R. V, 1803, § VII

Rules for receiving, trying,

The whole of the rules enacted for the guidance of those courts, in receiving, trying, and deciding appeals, including

* On the 10th May 1798, the sudder dewanny adawlut passed a rule of court, that appeals from dismissals of the provincial courts on default, be brought forward as soon as the pleadings may be completed; that if the dismissal be set aside, no time may be lost in referring the cause back to the provincial court, to be tried and decided upon the merits of it. The court also resolved, on the 14th November 1798, that appeals relative to demands of rent or revenue, such as are described in Section XXII. Regulation III, 1794, should, in pursuance of the spirit of that section, be brought on for decision, whenever the pleadings are filed, without regard to the regular order of trial.

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the obſervance of the rules, preſcribed for the trial and deciſion of ſuits, in the zillah and city courts, (as far as the ſame can be applied) are alſo equally applicable to, and obligatory upon, the ſudder dewanny adawlut *. It will therefore be

and deciding appeals in provincial courts, and for trial and deciſion of ſuits in zillah and city courts, applicable to ſudder dewanny

* This is expreſsly provided by Regulations VI, 1793, and V, 1803. And it was declared by the court in a caſe decided on the 26th October 1796, (Rajah MOHUMMUD ZUMAN KHAN, verſus Mr. ROGER GALE,) that "the regulations for the adminiſtration of juſtice in the courts of dewanny adawlut, paſſed on the 5th July 1781, and 27th June 1787, having been equally obligatory on the court of ſudder dewanny adawlut, as on the courts of moſuſſil dewanny adawlut, the former court was not authorized to grant any diſpenſation or exemption from the proviſions of thoſe regulations, either in their own court, or in any of the moſuſſil courts." The ſtated mode of proceeding on appeals to the provincial courts, when preferred through the zillah and city courts, is alſo obſervable *(mutatis mutandis)* by the provincial courts, when appeals are preferred through them to the court of ſudder dewanny adawlut. On the 27th April 1796, the provincial courts were directed, in tranſmitting appeals to the ſudder dewanny adawlut, to report whether the appellant has paid the inſtitution fee, and given ſecurity for eventual coſts, and the fees of his pleader, as required by the regulations. Alſo whether the decree appealed from has been carried into execution, or otherwiſe. On the 19th April 1798, they were further inſtructed to tranſmit a copy of the decree to which the petition of appeal may relate; and if it do not clearly ſpecify the produce, amount or value, of the property adjudged, to add any information on this head which may have been recorded on their proceedings, or thoſe of the zillah and city courts; ſo as to enable the ſudder dewanny adawlut to judge and determine whether the appeal to them be admiſſible under the regulations. For the ſame purpoſe, the provincial courts were directed to be careful to note the exact date on which the petition of appeal may be received by them; and if the appeal ſhall not have been regularly preferred within the preſcribed period of three months, to require from the appellant a ſtatement of the reaſons for his delay; and tranſmit a copy thereof to the court of ſudder dewanny adawlut with the petition of appeal. They were further required to tranſmit all petitions for appeals to the ſudder dewanny adawlut as ſoon after the receipt of them, as may be practicable, conſiſtently with due obſervance of the foregoing inſtructions. A provincial court having admitted an appeal to the ſudder dewanny adawlut, which was prefered after the limited period, it was adviſed by the latter court, (on the 29th March 1798,) that it had exceeded its authority in ſuch admiſſion; and the ſame principle is applicable to appeals to the provincial courts, which cannot be admitted by the zillah or city courts, unleſs regularly preferred within the time preſcribed by the regulations. It may be further noticed, that a provincial court having declined to ſuſpend, during an appeal to the ſudder dewanny adawlut, the execution of a decree reverſing the judgment of a zillah court in favor of the original plaintiff, which had been executed in conſequence of the original defendant's not giving the preſcribed ſecurity; the provincial court being of opinion that Section II, Regulation XIII, 1796, was not meant to maintain poſſeſſion ſo obtained, after a reverſal of the original judgment; the ſudder dewanny adawlut, on the 9th Auguſt 1803, determined that, under the terms of that regulation, the appellant was entitled to hold poſſeſſion of the property adjudged and delivered to him by the zillah court, on his giving the ſecurity required for ſuſpending the execution of decrees appealed from, until a final deciſion ſhould be paſſed upon his appeal. In another caſe, wherein the appellant died after his appeal to the ſudder dewanny adawlut had been admitted, and the right of inheritance to his eſtate was diſputed between the reſpondent and others, the court (Auguſt 9th 1798) ſuſpended all proceedings on the appeal, till it ſhould be revived by the legal heir, after a determination upon the right of ſucceſſion by a ſeparate ſuit in the zillah court.

ſufficient,

adawlut, and equally obligatory upon that court.

ſufficient, in addition to what has been ſtated, relative to the provincial, zillah, and city courts, and the appeals cognizable by the ſudder dewanny adawlut, to ſpecify the conſtitution, powers, and general duties of that court, as now ſubſiſting under Regulation II, 1801.

Preamble to R. II, 1801. Reaſons for altering the conſtitution of the ſudder dewanny adawlut, and appointing judges, not members of the executive government.

NOTWITHSTANDING the limitations of appeals to the ſudder dewanny adawlut, made by Regulations XII, 1797, and V, 1798, the number of undecided cauſes was found to accumulate, by reaſon of the various public duties of the Governor General and Members of the Supreme Council, which occaſioned unavoidable delays in the proceedings of that court; and of the nizamut adawlut, or ſuperior court of criminal juriſdiction, which was alſo compoſed of the Governor General in Council; aſſiſted by the law officers, and miniſterial officers, before mentioned. It was at the ſame time, deemed eſſential by MARQUESS WELLESLEY "to the impartial, "prompt, and efficient adminiſtration of juſtice, and "to the permanent ſecurity of the perſons and properties "of the native inhabitants of theſe provinces, that the Go- "vernor General in Council, exerciſing the ſupreme legiſla- "tive and executive authority of the State, ſhould adminiſ- "ter the judicial functions of the Government, by the means "of courts of juſtice diſtinct from the legiſlative and execu- "tive authority." It was therefore enacted by Regulation II, 1801, (with a ſimilar proviſion for the nizamut adawlut) that "the court of ſudder dewanny adawlut ſhall henceforth conſiſt of three judges; to be denominated reſpectively, chief judge, ſecond judge, and third judge, of the ſudder dewanny adawlut. The ſaid chief judge ſhall not be the Governor General, nor the Commander in Chief, but ſhall be one of the Members of the Supreme Council, to be ſelected and appointed by the Governor General in Council; and the ſaid ſecond and third judges ſhall be ſelected and appointed by the Governor General in Council from among the cove-

R. II, 1801, §. III. Rule for appointment of three judges, to compoſe the court.

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nanted Civil Servants of the Company not being Members of the Supreme Council. It is further enacted by the above Regulation, that the chief judge, and each of the puiſne judges, appointed to the court of ſudder dewanny adawlut, ſhall, previouſly to entering upon the execution of the duties of his office, take and ſubſcribe before the Governor General in Council the ſame oath as is required to be taken and ſubſcribed by the judges of the provincial courts of appeal. That the ſudder dewanny adawlut be an open court, to be held (as directed in Section III, Regulation VI, 1793,) in a large convenient room, at Calcutta. That two judges ſhall be neceſſary to hold a court; and that no decree or final order of the court ſhall be valid unleſs paſſed by two judges preſent. In the event of a difference of opinion when the three judges are preſent, the voices of the majority are to determine the queſtion; but if a difference of opinion ariſe when two judges only are preſent, the queſtion before the court is to be poſtponed for adjudication until the third judge (who is to be adviſed of the caſe by the regiſter) ſhall attend. The ordinary ſittings of the court are required to be holden on three fixed days in each week; and ſpecial ſittings, when neceſſary, are to be ſummoned by the regiſter, on his receiving orders for that purpoſe from the chief judge; or, during the abſence or indiſpoſition of the chief judge, from the ſenior judge at the preſidency. The chief judge, or any judge of the court to whom the duty may be delegated, is declared competent to receive petitions of appeal, or any other petitions receivable by the ſudder dewanny adawlut; and to proceed thereupon as the regulations authorize and direct; ſo that all ſuch petitions be received in open court; and that no deciſion, or final order, be paſſed thereupon, otherwiſe than in the preſence of two judges; nor any order which may be repugnant to a previous decree or order of the court. Any one, or more, of the judges of the ſudder dewanny adawlut, may alſo take the depoſitions of witneſſes, in

R. II, 1801, § IV to VI. Oath of office to be taken by the judges.

Court to be open, and where held.

General rules for ſittings of the court, and its proceedings.

open

open court; inſtead of cauſing the ſame to be taken by the regiſter; in caſes where this mode of examination may be judged adviſable; and, generally, the judges of that court are authorized to regulate the mode and order of their proceedings; as well as the execution of their proceſs; ſubject to the rules preſcribed by the regulations.

R. VI, 1793, § XIII. R. V, 1803, § XIII. Proceſs to parties, witneſſes, or others, and all judicial orders of the court, in what language and manner to be iſſued.

All proceſs to parties and witneſſes, and every rule or order for the execution of a decree, or relative to any cauſe or matter depending before the court, is however, as in the provincial courts, to be written or printed in the Perſian and Bengal languages, for Bengal and Oriſſa; and in the Perſian and Hindooſtanee languages for the other provinces; to be ſealed with the ſeal of the court; and ſigned by the regiſter. All ſuch proceſs, rules, and orders, to be ſerved or executed on any parties, witneſſes, or other perſons, not being in actual attendance on the court, are to be directed to the provincial court of the diviſion; or if judged expedient, for expedition or any other purpoſe, to the judge of the zillah or city, in which the cauſe may have originated, or in whoſe juriſdiction the diſputed lands may be ſituated, or the parties may reſide. If any provincial, zillah, or city court, to whom any ſuch proceſs, rule, or order may be directed, ſhall wilfully diſobey, or neglect to perform, the commands contained in it, or make a falſe return; the judges, who may commit ſuch offence, are liable to be ſuſpended from their offices by the ſudder dewanny adawlut; who are to notify the ſuſpenſion to the Governor General in Council, within ten days after it ſhall take place; together with the cauſe of it; and to certify, under the ſeal of the court, the proceedings, depoſitions, exhibits, and all other relative papers, which may be neceſſary to enable the Governor General in Council to paſs a determination upon the caſe. For reſiſtance to any proceſs, rule, order, or decree of the ſudder dewanny adawlut, by any landholder, farmer, or other perſon, the ſame penalties are

Powers of the court in caſes of wilful diſobedience or neglect, or of a falſe return.

R. VI, 1793, § XXIV, to XXVII. R. V, 1803, § XXIV, to XXVII.

preſcribed

preſcribed as have been already ſtated for reſiſtance to the proceſs of a provincial, zillah, or city court.* If any perſon ſhall charge the judge of a zillah or city court, or any judge of a provincial court of appeal, before the ſudder dewanny adawlut, with having been guilty of corruption in oppoſition to his oath, the court are to receive the charge; provided the complainant ſhall previouſly make oath to the truth of it (or ſubſcribe the required declaration if he be of the deſcription of perſons whom the court are empowered to exempt from taking an oath) and give ſecurity, in whatever ſum the court may judge proper, to appear and proſecute the charge when required. Upon the receipt of any ſuch charge, preferred on oath, or under the preſcribed declaration, and with the required ſecurity, (as well as upon a charge of corruption, ſo preferred againſt the judge of any zillah or city court to a provincial court of appeal, being tranſmitted by the latter to the ſudder dewanny adawlut) that court, on conſideration of the circumſtances of the caſe, may either direct the parties to proceed to Calcutta, that the charge may be tried before the ſudder dewanny adawlut; or, if the perſon accuſed be a zillah or city judge, may order the charge to be tried by the provincial court of the diviſion; or if the party be a judge of a provincial court, may grant a ſpecial commiſſion to three or more of the judges of the other provincial courts to aſſemble and try the charge; or, in any of the caſes mentioned, may recommend to the Governor General in Council, to order that the perſon accuſed be proſecuted in the ſupreme court of judicature by the law officers of government, under the pro-

Penalties for reſiſtance of proceſs.
R. VI, 1793, § VIII.
R. V, 1803, § VIII.
Court how to proceed, on charges of corruption againſt a provincial, zillah, or city judge.

* It may be proper to notice however, that in a caſe of reſiſtance of elvil proceſs, referred to the ſudder dewanny adawlut, in May 1799, the judge of zillah Shahabad was informed by that court, that they did not conſider, Section XXII, Regulation IV, 1793, to authorize or intend, a ſequeſtration of the offenders lands, until the judgment of forfeiture be confirmed by the Governor General in Council. The terms of the rule indeed clearly expreſs this, as they direct that "in the event of the Governor General in Council ordering the decree to be executed, the court is to iſſue a precept, requiring the collector of the zillah to depute an aumeen to ſequeſter the lands, and collect the rents and revenues." Section XXIV, of the ſame regulation, is likewiſe of ſimilar tenor, reſpecting judgments for cancelling the leaſes of farmers who may reſiſt the proceſs of the civil courts,

viſions

Judges convicted of corruption, declared liable to removal from office, and ſuſpenſion from the ſervice.

viſions made by Act of Parliament for ſuch caſes. It is further declared that if the charge be eſtabliſhed, the Governor General in Council will remove the judge convicted of corruption from his office; and ſuſpend him from the Honorable Company's Service, or paſs ſuch other order as may appear proper. That, if the charge be not proved, the judge ſo accuſed, will be at liberty to ſue his accuſer for damages, in any court of judicature to which he may be amenable. And that the rule thus eſtabliſhed, for receiving and trying charges of corruption againſt the judges of the zillah, city, and provincial courts, are not to be conſtrued to prevent any individual, who may have to prefer a charge of this deſcription, from proſecuting it in the ſupreme court of judicature in the firſt inſtance. The rules preſcribed for receiving and trying charges of corruption or extortion, againſt the miniſterial officers of the courts of juſtice, will be hereafter mentioned, with the regulations concerning the appointment and duties of ſuch officers. Any negligence or miſconduct, in the diſcharge of official duty, not expreſsly provided for by the regulations, is to be reported to the court of ſudder dewanny adawlut; who after ſuch enquiry as ſhall be judged neceſſary, in proof or explanation of the circumſtances ſtated, are to report the caſe to the Governor General in Council, if it appear to require his notice or orders; with a copy of all proceedings and papers received on the ſubject of it. "The court of ſudder dewanny adawlut "is directed to report to the Governor General in Council "all inſtances of wilful neglect of duty, or aggravated miſ-"conduct, by a covenanted ſervant of the Company employ-"ed in any of the civil courts, whether in a judicial or mi-"niſterial capacity; and whether ſuch neglect or miſconduct "may have been reported by a provincial, zillah or city "court; or may otherwiſe appear from the proceedings and "papers before the court. But if the caſe ſhould appear to "involve an error of judgment only; or a ſlight default, for "which an admonition from the court may be deemed a ſuf-

If acquitted may ſue their accuſers for damages.

Any individual may alſo prefer charges of corruption in the ſupreme court.

R. II, 1801, § VII.
R. V, 1803, § XXXVIII.
Rule to be obſerved, in caſes of negligence or miſconduct, in the diſcharge of official duty, not expreſsly provided for by the regulations.

"ficient

" ficient correction; the court of ſudder dewanny adawlut, in " the former caſe, is authorized to notice the error for the infor- " mation and guidance of the party who may have committed " it; or, in the latter caſe, to adviſe him of his default and " admoniſh him accordingly."

THE court of ſudder dewanny adawlut are further empowered to receive any original ſuit or complaint, which may be cognizable in any zillah or city court; or any appeal from the deciſion of a zillah or city court, which may be cognizable in any provincial court of appeal; and provided proof be made to their ſatisfaction, that the zillah or city judge refuſed or omitted to receive, or proceed in, ſuch original ſuit or complaint; that the complainant applied to the provincial court of the diviſion; and that ſuch court omitted or refuſed to command the judge to receive or proceed in it; or in the caſe of an appeal, that the provincial court omitted or refuſed to receive or proceed in it; may command the zillah or city judge to receive ſuch original ſuit or complaint, and proceed to hear and determine it; or may command the provincial court to receive, hear, and determine the appeal. The court are alſo veſted with authority to receive any petitions reſpecting ſuits or matters, which may be depending or have been decided, in any zillah or city court; as well as any petitions reſpecting appeals or matters that may be depending, or have been decided, in any provincial court of appeal; and provided it be proved to their ſatisfaction, that the petition, if relative to any matter depending before, or decided by, a zillah or city court, was preſented to the judge of ſuch court; and that he refuſed or omitted to receive and proceed on it; and that the complainant applied to the provincial court of the diviſion; and ſuch court omitted or refuſed to grant a precept to the zillah or city judge, as directed in ſuch caſes by the regulations; or, if the petition relate to a matter depending before, or decided by, a provincial

R VI, 1793, § IV, and V. R. II, 1798, § V, VII and VIII. R. V, 1803, § IV, and V. In what caſe the ſudder dewanny adawlut may receive original ſuits cognizable by the zillah and city courts, or appeals cognizable by the provincial courts, and how to proceed thereupon.

In what caſes the court may alſo receive petitions reſpecting matters depending before, or decided by the provincial, zillah, or city courts; and how to proceed thereon.

cial court, that it was preſented to ſuch court; and that they refuſed or omitted to receive and proceed upon it; may iſſue a precept, under the ſeal of the court and atteſted by the regiſter, commanding the zillah or city judge, or the provincial court of appeal, (as the caſe may relate to either) to receive the petition; and to proceed reſpecting it according to the regulations.

Object of foregoing provisions.

THE foregoing proviſions have in view the certain receipt of all ſuits, appeals, and petitions of whatever nature, relative to matters cognizable by the eſtabliſhed courts of civil juſtice; and the regular proceeding of the proper courts thereupon, in ſuch manner as the regulations preſcribe. The court of ſudder dewanny adawlut being alſo empowered, in common with the provincial courts of appeal, to receive further evidence in every caſe wherein it may appear neceſſary for the juſt determination of the cauſe in appeal; or to refer it back for further trial and deciſion to the court in which the appeal may have originated, with ſpecial directions for receiving any requiſite new evidence; as may be deemed moſt conducive to juſtice, and the convenience of the parties and witneſſes; any errors or defects in the trial, or deciſion, may, in all appealable caſes, be remedied by the preſcribed courſe of appeal. But as the civil courts are not authorized by the regulations to reviſe their own proceedings, after judgment has been paſſed by them; and the exerciſe of an unqualified power of reviſion, in decided caſes, would tend to depreciate the value of property held under the decrees of the courts of judicature; whilſt, at the ſame time, particular caſes may occur, in which it would be proper that the civil courts ſhould have a power of reviſing their proceedings, for the purpoſe of correcting incidental errors, not affecting the principle of the deciſion; or for amending a judgment appearing to be erroneous, either on the face of the decree, or from the diſcovery of new matter or evidence, which could not be had, or uſed, at the time the decree was paſſed

Powers veſted in ſudder dewanny adawlut and provincial courts ſufficient to correct errors or defects in all appealable caſes.

But a qualified power of reviſion neceſſary in caſes not appealable.

paſſed, it was neceſſary to provide for an occaſional review of the proceedings held, and deciſions paſſed, in ſuch caſes; when not open to appeal. And that the grounds for granting a reviſion, in all inſtances appearing to call for it, might be uniform; as well as that it might not be allowed, in any inſtance, without due deliberation and circumſpection; it was judged expedient to lodge the excluſive power of authorizing the review of a final judgment, which under the preſcribed limitations may not be open to a regular appeal, with the court of ſudder dewanny adawlut. The following proviſions were accordingly enacted by Regulation II, 1798; and have been ſince extended to the ceded provinces.

Reaſons for lodging this power with the ſudder dewanny adawlut only.

" ANY perſons conſidering themſelves aggrieved by the " decree of a zillah, city, or provincial court, from which " decree no appeal can be had under the exiſting regulations " to any ſuperior court; and who, from the diſcovery of " new matter or evidence, which was not within their know- " ledge, or could not be adduced by them, at the time when " the decree was paſſed, or for other good and ſufficient " reaſon, may be deſirous of obtaining a review of the judgment " paſſed againſt them, are at liberty to preſent a petition for " this purpoſe (on ſtampt paper) to the court in which the " decree in queſtion may have been paſſed; and, if the judge " or judges of ſuch court, ſhall, on conſideration of the " reaſons urged by the party, be of opinion that the review " deſired is neceſſary to correct an evident error in the judg- " ment, or otherwiſe for the due adminiſtration of juſtice, they " ſhall report the ſame, with the grounds of ſuch opinion, to " the court of ſudder dewanny adawlut; tranſmitting at the " ſame time a copy and tranſlation of the petition preſented " to them; and ſhall be guided by the inſtructions they may " receive from that court in admitting or rejecting the prayer " of ſuch petition; as well as in the admiſſion of evidence, " if the review be granted, on the further proceedings to be " held

R. II, 1798, § II, and III.
R II, 1803, § XXII
R IV, 1803, § XXX.
R V, 1803, § XXXVII.
Proviſions made for granting a review, in caſes not appealable, which may appear to require it.

" held by them in conſeqence. Provided however, that no " reference to the ſudder dewanny adawlut ſhall be conſidered " neceſſary in caſes wherein the judge, or judges, of the court " in which the final decree may have been paſſed, ſhall deem " the reaſons urged for a reviſion thereof inſufficient; their " rejection of the petition for a review in all ſuch caſes being " hereby declared concluſive. The court of ſudder dewan- " ny adawlut, in caſes referred to them by the provincial, " zillah, and city courts, as well as in all caſes wherein peti- " tions may be preferred to them for a reviſion of their own " judgments, not open to an appeal to the King in Council, " are authorized to grant the review deſired; if, on due con- " ſideration of the reaſons urged for the ſame, the circumſtances " of the caſe appear in juſtice to require it; ſuch, for inſtance, " as an error in judgment appearing on the face of the decree; " or the diſcovery of new matter or evidence which could " not be had or uſed at the time when the decree was paſſed; " but no new evidence or matter, then in the knowledge of " the parties, which might have been uſed before, ſhall be a " ſufficient ground for granting a review, unleſs for ſpecial " reaſons the court of ſudder dewanny adawlut ſhould ſee " juſt cauſe to admit the ſame; in which caſe ſuch reaſons are " to be recorded at large in their proceedings. The above " court are further authorized, whenever they may judge " it proper to grant a review, to direct the admiſſion or re- " jection of any new evidence that may be offered; as well " as generally to paſs ſuch orders upon the caſe as they may " deem juſt and equitable; and all orders ſo paſſed by them " (except in caſes appealable to His Majeſty in Council) ſhall " be deciſive and final."

R VI, 1793, § IX. Sudder dewanny adawlut empowered to admit appeals from deciſions paſſed, before the eſtabliſhment of

In addition to the appeals which have been noticed, from the provincial courts eſtabliſhed on the 1ſt May 1793, the court of ſudder dewanny adawlut were empowered, by Regulation VI, 1793, to hear and determine appeals from deciſions

deciſions paſſed by the provincial councils, or any members of a provincial council or committee, as a court of appeal, on or before the 6th April 1781; or by the committee or board of revenue, between the 6th April 1781, and the 1ſt May 1793, either in ſuits tried and decided by them in the firſt inſtance, or in appeal from deciſions of the collectors, or any other officers entruſted with the collection of the revenue. The court were alſo empowered, by Regulation V, 1803, to hear and determine appeals from deciſions paſſed by the board of commiſſioners, in the ceded provinces, before the inſtitution of the Bareilly provincial court. In the caſes abovementioned, as in all other caſes wherein an appeal is authorized to the ſudder dewanny adawlut, the court are declared at liberty to confirm or reverſe, in whole or in part, the decrees appealed from; and "to "make ſuch further order on all ſuch decrees, as juſtice, "equity, and good conſcience may require;" as well as to award to either party ſuch coſts as they may deem reaſonable. But the court were directed to exerciſe with caution the power veſted in them of admitting appeals, from the deciſions referred to, after the time limited for preferring them; leſt all property held under ſuch deciſions ſhould be deemed inſecure, from being conſidered liable to be again conteſted. For the ſame reaſon, the provincial courts were enjoined, by Regulation V, 1794, to exerciſe with caution the power veſted in them of admitting appeals, after the limited period, from decrees of the moſuſſil dewanny adawluts, paſſed antecedently to the year 1793; and both the provincial courts and ſudder dewanny adawlut were reſtricted by that regulation from the future admiſſion of appeals againſt any judgments of the former courts of juſtice which were final under the regulation in force at the time of their being paſſed.

the preſent provincial courts, by the provincil councils, or by the committee or board of revenue.

R. V, 1803, Alſo from deciſions of commiſſioners in ceded provinces.

And to confirm reverſe, or alter, the decree appealed from; as in all caſes of authorized appeals.

But appeals to be admitted, with caution, after the time limited for preferring them.

R. V, 1794, Similar caution to provincial courts And reſtriction againſt appeals from final judgments paſſed by former courts.

THE late renewal of war between Great Britain, France and Holland, rendering it uncertain how long the ſettlements

of

of Chandernagore and Chinſurah may remain under the authority of the Britiſh government; and the Governor General in Council being deſirous that the inhabitants of thoſe ſettlement, whilſt they continue under Britiſh protection, ſhould, as far as circumſtances admit, enjoy the benefit of the ſame proviſions, as have been made for adminiſtering the judicial functions of the government throughout the Company's provinces, by the means of courts of juſtice diſtinct from the legiſlative and executive authority of the State; the court of ſudder dewanny adawlut have been recently empowered (by Regulation I, 1805) to hear and determine appeals from the deciſions of the European courts at Chandernagore and Chinſurah; in all civil ſuits inſtituted, heard, and determined, in thoſe courts, in the firſt inſtance; as well as a further appeal, in cauſes originally tried in the cucherry, or native court, and heard in appeal by the ſuperintendent of Chandernagore, or commiſſioner at Chinſurah, in his judicial capacity; under a limitation, in ſuch caſes, ſimilar to that which reſtricts the right of appeal to the ſudder dewanny adawlut from the decrees of the provincial courts of appeal. The rules enacted for this purpoſe, and to remain in force whilſt the ſettlements of Chandernagore and Chinſurah ſhall continue under the Britiſh government, are contained in the regulation referred to; which relating excluſively to thoſe ſettlements, and being alſo of temporary duration only, a detail of it in this analyſis does not appear neceſſary. It will be ſufficient to notice, that it is adapted to the local circumſtances of the captured French and Dutch ſettlements for which it has been enacted; that it is provided "the "laws and uſages, which govern the deciſions of the courts of "juſtice, eſtabliſhed at Chandernagore and Chinſurah, ſhall "alſo govern the deciſions of the court of ſudder dewanny "adawlut in all appeals under this regulation." And that "the "regulations which have been enacted, or which may be "hereafter enacted, for the general adminiſtration of civil "juſtice,

R. I, 1805. Sudder dewanny adawlut authorized to receive appeals in certain caſes, from the deciſions of the ſuperintendent of Chandernagore, and commiſſioner at Chinſurah.

What laws and uſages to govern the determination of the ſudder dewanny adawlut upon ſuch appeals. And how far the general regulations are to be conſidered applicable thereto.

" juſtice, in the Britiſh provinces under this preſidency, par-
" ticularly for the guidance of the ſudder dewanny adawlut;
" ſhall not be conſidered applicable to the appeals intended to
" be provided for by this regulation; except as far as they
" may be fully conſiſtent with the proviſions contained in it;
" and may be in all reſpects applicable to ſuch appeals." In caſes not affecting the rights of parties however; and particularly as far as reſpects the power and authority of the ſudder dewanny adawlut over the provincial, zillah, and city courts, " the principles of the general regulations in
" force are declared applicable to the courts of civil juſtice
" eſtabliſhed at Chandernagore and Chinſurah;" under the ſuperintendent of the former, and commiſſioner at the latter ſettlement, in his capacity of judge of thoſe courts; who is required " to conform to all proceſs, rules, and orders which
" may be addreſſed to him, under the ſeal of the ſudder
" dewanny adawlut, and the ſignature of the regiſter; and
" to perform the exigency thereof within the time limited, or
" to certify good and ſufficient reaſon why the ſame had not
" been carried into execution as required."

And to the authority of the ſudder dewanny adawlut over the judge of the courts at Chinſurah and Chandernagore.

THE judgments of the court of ſudder dewanny adawlut are final and concluſive, in all appeals heard and determined by that court, under the regulation laſt mentioned, as well as under the general regulations before noticed, within the limitation preſcribed by the Statute 21, GEORGE III, Chapter 70, Section 21; viz. five thouſand pounds; or, at the medium rate of exchange, fifty thouſand current rupees. If the amount or value adjudged, (to be computed according to the general rules preſcribed for determining the value of the ſame property, when conſtituting the cauſe of action in the ſudder dewanny adawlut, and civil courts ſubordinate thereto,) be five thouſand pounds; or current rupees fifty thouſand; (being, excluſive of fractions, ſicca rupees forty three thouſand one hundred and three;) an appeal lies to His Majeſty in Privy

R. XVI, 1797; R. V, 1803, § XXXI, to XXXVI. R. I, 1805, § XIII. In what caſes an appeal lies from the judgments of the ſudder dewanny adawlut to the King in Council.

Neceſſity of rules for receiving and forwarding ſuch appeals.

Privy Council, in conformity with the ſtatute above quoted, and the regulations framed in purſuance of it. But no rules having been preſcribed by the ſtatute reſpecting the admiſſion of the appeals thereby authorized; and it being neceſſary to eſtabliſh ſuch, as well for the information of the parties who might be deſirous to appeal from decrees of the ſudder dewanny adawlut; as for the guidance of that court in receiving and forwarding appeals preſented to them; the Governor General in Council referred to the proviſions made for appeals to the King in Council under His Majeſty's charter for erecting the ſupreme court of judicature at Calcutta; as well as to the rules and orders framed by the ſupreme court, and approved by His Majeſty in Council; and eſtabliſhed the following rules, for appeals to the King in Council, from deciſions paſſed by the court of ſudder dewanny adawlut, to be in force until His Majeſty's pleaſure be known thereupon.

Rules eſtabliſhed for thoſe purpoſes.

Petition of appeal required to be preſented within ſix months,

Court may execute, or ſuſpend execution of, the judgment appealed from, taking ſufficient ſecurity.

Security to be alſo given by

"ALL perſons deſirous of appealing from a judgment of the "court of ſudder dewanny adawlut, to the King in Council, "are required to preſent their petition of appeal to the ſudder "dewanny adawlut, either themſelves, or through one of the "authorized pleaders of that court, duly empowered to pre-"ſent ſuch petition in their behalf, within ſix calendar months "from the date on which the judgment appealed againſt "may have been paſſed. In caſes of appeal to His Majeſty "in Council, the court of ſudder dewanny adawlut may "either order the judgment paſſed by them to be carried into "execution, taking ſufficient ſecurity from the party, in whoſe "favor the ſame may be paſſed, for the due performance of "ſuch order or decree as His Majeſty, his heirs or ſucceſſors, "ſhall think fit to make on the appeal; or to ſuſpend the "execution of their judgment during the appeal, taking the "like ſecurity, in the latter caſe, from the party left in poſſeſſi-"on of the property adjudged againſt him; but in all caſes "ſecurity is to be given by appellants, to the ſatisfaction of

"the

" the ſudder dewanny adawlut for the payment of all ſuch " coſts as the court may think likely to be incurred by the " appeal; as well as for the performance of ſuch order and " judgment as His Majeſty, his heirs or ſucceſſors, ſhall think " fit to give thereupon." After receiving ſuch ſecurity, if the cauſe be appealable, and the petition of appeal ſhall have been preſented within the preſcribed period, the court of ſudder dewanny adawlut are to declare the appeal admitted, and to give notice thereof to the appellant and reſpondent; that they may take meaſures, the one to proſecute, the other to defend, the cauſe in appeal before His Majeſty in Privy Council, according to the eſtabliſhed mode of proceeding in ſimilar caſes.

appellants for eventual coſts.

Appeal when to be admitted, and notice given to the parties.

It is at the ſame time provided by the regulations, which contain the above rules, that nothing therein ſhall be underſtood to bar the full and unqualified exerciſe of His Majeſty's pleaſure, upon all appeals to him from the deciſions of the ſudder dewanny adawlut, either in rejecting any he may conſider inadmiſſible under the ſtatute reſpecting ſuch appeals; or in receiving any he may judge admiſſible, notwithſtanding the proviſions made for the guidance of the ſudder dewanny adawlut. It is further directed, that in all caſes wherein that court may admit an appeal to the King in Council, they are to cauſe two exact copies to be made on ſtampt paper, at the expenſe of the appellant (paupers excepted) of all the proceedings held, and judgments or orders given, in the caſe appealed; including the whole of the evidence and documents (with an Engliſh tranſlation of all papers in any of the country languages) as well as a copy of, or extract from, any local regulation referred to in the judgments paſſed by any of the courts, wherein the cauſe appealed may have been tried and decided; and are to tranſmit the ſame, as ſoon as prepared, under their official ſeal, and the ſignature of their regiſter, to the Governor General in Council; for the purpoſe of being forwarded,

Rules ſtated are ſubordinate to the full exerciſe of His Majeſty's pleaſure.

R. XVI, 1797, § V, and VI.
R. VII, 1800, § XIX.
R. II, 1801, § XVI.
R. V, 1803, § XXXIV, and XXXV.
Copies and tranſlations of all proceedings and papers relative to appealed caſes to be tranſmitted to His Majeſty in Council.

forwarded, by the firſt ſecure and ſeparate conveyances, to His Majeſty in Council. On the application of the appellant, or reſpondent, the regiſter to the ſudder dewanny adawlut is alſo to furniſh them with one or more copies of the proceedings held, and judgments or orders paſſed, in the caſe appealed; provided they reſpectively agree to defray ſuch expenſe as may be incurred in making the ſame upon ſtampt paper; but not otherwiſe*.

Parties alſo intitled to receive copies on paying the expenſe of making them upon ſtampt paper.

When tranſlations are required of the proceedings held in a zillah, city, or provincial court, or in the ſudder dewanny adawlut, in conſequence of an appeal to His Majeſty in Council, or for any ſpecial purpoſe, it is the province of the regiſters and aſſiſtants to the ſeveral courts to make the tranſlations required from them reſpectively. But if, at any time, their other official avocations ſhould not admit of their making ſuch tranſlations with the requiſite diſpatch, the court of ſudder dewanny adawlut are empowered to authorize the employment of any perſon or perſons, poſſeſſing an adequate knowledge of the original language, to make the ſame; at the eſtabliſhed rate of one ſicca rupee for one hundred words of the original language; (or the ſame rate for figures, calculating five figures for a word) ſubject to the reviſion of the regiſter to the provincial, zillah, or city court, from which ſuch tranſlation may be demandable; who, in ſuch inſtances, is to counterſign the tranſlation; and is held reſponſible for the accuracy of it. The proceedings of the court of ſudder dewanny adawlut (as well as of the nizamut adawlut) were formerly kept in the Engliſh language, and copied for tranſmiſſion to the Governor General in Council, and the Honora-

R. XIX, 1797, § IV, and V. R. II, 1801, § XVII, to XIX. R. IV, 1803, § XXXI, to XXXIII. By whom tranſlations of papers, in the country languages, are to be made; when required in appeals to the King in Council, or for any ſpecial purpoſe.

* On the 3d May 1798, the court of ſudder dewanny adawlut, with the advice of the advocate general, made a rule, that original documents ſhall not be returned during appeals to the King in Council; but that authenticated copies be delivered on application of the parties who exhibited them. The court alſo reſolved, on the 11th April 1799; not to take or receive, further evidence offered in a cauſe appealed to the King in Council, without inſtructions for that purpoſe from His Majeſty in Council.

ble

ble Court of Directors. It was in conſequence neceſſary, at that time, to require complete tranſlations of the proceedings held upon all cauſes appealed to the ſudder court. But under the new conſtitution of the court, made by Regulation II, 1801, the practice of keeping Engliſh proceedings, except as far as convenient for miſcellaneous Engliſh correſpondence, and conducive to regularity, was diſcontinued; and copies of the court's proceedings were not required to be furniſhed in future, except in caſes of appeal to His Majeſty in Council, or of reference to the Governor General in Council, as preſcribed by the regulations. The office of tranſlator to the courts of ſudder dewanny adawlut (and nizamut adawlut) was therefore abolished; and the provincial, zillah, and city courts were exempted from the duty of ſending tranſlations, with papers in the native languages, except in caſes wherein they might be required by the precepts of the ſudder dewanny adawlut; or by any regulation or order expreſſly requiring the ſame. The ſaving of expenſe, time, and labor, in tranſlating voluminous records, and in tranſcribing the tranſlations when made, was not the only advantage which reſulted from the alteration thus adopted in the proceedings of the ſuperior civil and criminal courts. The original proceedings held before the zillah, city, and provincial courts are now read before the court of ſudder dewanny adawlut, (as well as the proceedings of the courts of circuit upon criminal trials before the nizamut adawlut,) inſtead of the Engliſh tranſlations which were formerly ſubſtituted; and muſt obviouſly bring before the judges a more accurate exhibition of the pleadings of the parties, as well as better evidence upon the merits of the caſe, than could, in general, have been obtained from a verſion of them in another language. It may be added, that, with a view to furniſh the Honorable Court of Directors, and His Excellency the Governor General in Council, with the information before ſubmitted to them in copies of the proceedings of the ſudder dewanny adawlut, and nizamut adawlut; and in a form better calculated

R II, 1801, § XVI to XIX. Engliſh proceedings of ſudder dewanny adawlut and nizamut adawlut diſcontinued under the new conſtitution of thoſe courts; and advantages which have reſulted from it.

Report of civil judgments, and criminal ſentences to be prepared, from commencement of 1805, for the information of governments, and the Court of Directors.

to

to afford a ready knowledge of the judgments, and ſentences, paſſed by thoſe courts; it has been lately propoſed by the courts, and approved by government, to prepare an annual report, from the commencement of the preſent year, of all civil cauſes adjudged by the ſudder dewanny adawlut; and of all trials, on which ſentence may be paſſed by the nizamut adawlut. A deputy regiſter, and a ſecond aſſiſtant, have been added to the eſtabliſhment of the courts, for the purpoſe of preparing ſuch reports; of which copies are to be tranſmitted to the Governor General in Council and Court of Directors; and it is intended that caſes of importance ſhall be ſelected from them, by the judges, to be publiſhed, with the approbation of government, for general information. It cannot be neceſſary to enlarge upon the utility of this meaſure, as calculated to eſtabliſh precedents, and to promote the uniform adminiſtration of juſtice, in caſes not expreſsly provided for by the laws and regulations. Nor does it appear requiſite to offer any comment, in addition to what has been quoted from the preamble to Regulation II, 1801, on the amended conſtitution of the principal civil and criminal courts, provided for by that regulation; which declares the proviſion thereby made, for the more effectual diſpatch of the proceedings of the courts of ſudder dewanny adawlut and nizamut adawlut, and for more diſtinctly ſeparating the exerciſe of the judicial functions of the government from the legiſlative and executive authority, "important to the honor and ſtability of the Britiſh government; and to the happineſs and proſperity of the native "ſubjects of theſe provinces." *

And caſes of importance to be ſelected from ſuch reports for publication.

Concluding remark on amended conſtitution of the principal civil and criminal courts.

IT

* Since the foregoing recital was written, a regulation has been paſſed for the more complete attainment of the two important objects ſtated, by conſtituting the courts of ſudder dewanny adawlut and nizamut adawlut to conſiſt of three judges, neither of whom ſhall be a member of the Supreme Council. Independently of the fundamental objections to a member of the executive government preſiding as chief judge in thoſe courts, which are ſet forth in the regulation recently enacted; the proviſion made by it had become abſolutely neceſſary, from the extended juriſdiction of the courts over the ceded and conquered provinces, and the conſequent augmentation of buſineſs, which required more frequent ſittings than could be held by two judges, the preſence of both of whom was indiſpenſable to form a competent court. The addition of

Further general provisions relative to the civil courts.

It remains to notice, in the present section, such general provisions, relative to the whole of the civil courts, as have not been specified in treating of them respectively.

R VII, 1793. R. XIII, 1795. R VIII, 1796. R. VIII, 1797, § IV, and V. R. V, 1798, § IX to XV. R. III, 1802, § III, R X, 1803. R XI IX, 1803, § XXVI

Reasons for the appointment of native pleaders in the several courts; and objects of the rules concerning them.

To save the necessity of the personal attendance of suitors in the courts of civil judicature, and to obtain for them, in pleading their causes, the assistance of men of character and education, versed in the Mahomedan, or Hindoo law, as well as in the regulations of the British government, provision is made, by the regulations noted in the margin, for the appointment of vakeels, or native pleaders, in the zillah and city courts, the provincial courts of appeal, and the sudder dewanny adawlut; under rules and restrictions, calculated to secure to their clients a diligent and faithful discharge of their trust. The preamble to Regulation VII, 1793, sets forth, at length, the general disqualifications of the persons before employed, occasionally or professionally, as pleaders; who by their ignorance of the laws and regulations, and imperfect knowledge of judicial proceedings, as well as from their being liable to collusion and intrigue with the ministerial officers of the courts, impeded and prevented, instead of aiding and promoting, the speedy and impartial administration of justice. The people, in general, are at the same time necessarily precluded, by their pursuits and occupations in life, from attending the courts of justice; or acquiring a sufficient knowledge of the laws and regulations to enable them to plead their own causes. It was therefore indispensably necessary that the pleading of causes should be made a distinct profession; that none but persons duly qualified should be admitted to plead in the courts of judicature; and that, with a view to induce men of education and character to undertake the

*a third judge, who can devote the whole of his time to the administration of justice, civil and criminal, (which, it is manifest, no member of the government could do,) will admit of a daily sitting, either of the sudder dewanny or nizamut adawlut; and by the entire separation of the judicial authority vested in these courts, from the executive and legislative authorities of the State, Marquess Wellesley has put the key-stone to the fabrick of policy and justice, the constitution of British India, of which the foundations were laid by Marquess Cornwallis.

official

office of pleader, to prevent their being deterred from pleading the cauſes of their clients with becoming freedom, and to enſure integrity and fidelity in the execution of their duties, their appointments ſhould be ſecured to them as long as they conform to the regulations preſcribed for their guidance; and they ſhould be entitled to receive a fixed and liberal compenſation, proportionate to the amount or value of the cauſe of action in the ſuits wherein they might be employed. It is impoſſible to detail, in this place, the whole of the rules which have been enacted for the above purpoſes; and it will be enough to notice the principal of them.

Subſtance of the principal rules reſpecting pleaders.

By whom to be appointed and removed.

THE pleaders are appointed by ſunnuds, or patents, from the ſudder dewanny adawlut; and are not removable from their offices, except for incapacity or miſconduct in the diſcharge of their public duty; or for groſs profligacy or miſbehaviour in their private conduct; proved to the ſatisfaction of that court. They are to be ſelected from amongſt the ſtudents in the Mahomedan college at Calcutta, and the Hindoo college at Benares; or, if theſe colleges ſhall not furniſh a ſufficient number of qualified perſons, the ſudder dewanny adawlut may admit any other Mahomedans or Hindoos, after aſcertaining that they are men of good character and liberal education; giving a preference to perſons of this deſcription who have been bred to the ſtudy of the Hindoo or Mahomedan law *. Previouſly to being allowed to practice, they are required to take and ſubſcribe an oath, that they will truly and faithfully execute the duties of pleaders to the beſt of their knowledge and judgment; and in conſequence of the greater obligation of a retroſpective oath in the belief, and upon the conſcience, of Mahomedans, pleaders of the

From what deſcription of perſons to be ſelected.

Oath to be taken and ſubſcribed by them.

* The provincial, zillah, and city courts, were inſtructed by the ſudder dewanny adawlut, on the 29th November 1803, to be careful, in propoſing perſons for the office of pleader, to report their qualifications; and the ſituations in which they may have been previouſly employed. They were alſo deſired (on the 13th December 1797,) with a view to prevent miſtakes in drawing out the ſunnuds for native pleaders, whenever they might have occaſion to propoſe any new pleaders, to cauſe their names to be written in Perſian, as well as Engliſh.

Moſulman

Moſulman faith are directed to be ſworn half yearly to the actual execution of their duties with truth and fidelity *. That the pleaders, as well as all other perſons, may have it in their power to render themſelves acquainted with the regulations enacted by the Britiſh government, printed copies and tranſlations of them are ordered to be kept, for public inſpection, upon a table expreſſly allotted for that purpoſe, in ſome part of every court room, where all perſons may refer to them, or take copies of them.

Printed copies and tranſlations of the regulations to be open for their inſpection, and that of all other perſons.

UPON a pleader's agreeing to undertake the proſecution, or defence, of a ſuit, the party entertaining him is to preſent him with four annas as a retainer; and is to execute a vakalutnamah, conſtituting him pleader in the cauſe, and binding himſelf to abide by all acts which ſuch pleader may do in his behalf, in the proſecution, or defence, of it. If not a pauper, he is alſo to deliver good ſecurity for the payment of the eſtabliſhed fee to the pleader employed by him. Upon the deciſion of the cauſe, the pleader is to receive, either from his own client, or from the oppoſite party, as may be provided by the decree, a fixed rate of fee proportionate to the cauſe of action; being from five per cent on ſums not exceeding one thouſand ſicca rupees, to eight annas, or half per cent, upon ſums exceeding one hundred thouſand rupees. † If a party

Retaining fee.

Vakalutnamah.

Security for pleading fee.

Rate of fee to be received, on deciſion of the cauſe.

* On the 25th January 1798, the court of ſudder dewanny adawlut, in anſwer to a queſtion from the judge of zillah Tippetah, whether pleaders might be allowed to ſubſcribe a ſolemn declaration, as permitted to witneſſes of a certain deſcription, informed him that the oath required from pleaders, by Section IV, Regulation VII, 1793, cannot be diſpenſed with; and that the rule which authorizes a declaration only in certain caſes, by witneſſes, is not applicable to any public officers, who have the option of accepting, or declining, eſtabliſhed offices, with the conditions annexed to them.

† The following table for the ſpeedy calculation of the fees of pleaders in regular ſuits, according to the rates eſtabliſhed by Section X, Regulation V, 1798, was ſuggeſted by a gentleman high in the judicial department, and eminent for his talents and knowledge.

On ſums not exceeding	1000	ſicca rupees,	per cent.	5
Ditto, - -	5000	ditto,	ditto,	4 + 10
Ditto, - .	10,000	ditto,	ditto,	3 + 60
Ditto, - -	25,000	ditto,	ditto,	2 + 160
Ditto, - - -	50,000	ditto,	ditto,	1 + 410
Ditto, - -	1,00,000	ditto,	ditto,	Annas 12 or ¾ + 535
Ditto, exceeding		ditto,	ditto,	—— 8 or ½ + 785

A tax

What fee to be paid when two pleaders are employed.

party be deſirous of entertaining two pleaders, he is either to pay each of them the eſtabliſhed fee; or, if they agree to a diviſion, it is to be ſpecified in the vakalutnamah. But no ſingle vakeel is permitted to agree with his conſtituent for leſs than the eſtabliſhed fee, as a principal object in fixing the rates of fees for pleaders (that of inducing men of character and education to plead in the courts of juſtice) might be defeated by allowing ſuch private agreement, which would frequently enable the moſt needy to engroſs the buſineſs; inſtead of a preference being given to ſuperior qualifications and diligence.

Pleaders reſtricted from agreeing to receive leſs than the eſtabliſhed fee.

Fee to be received when ſuits are withdrawn before, or after, the pleadings are completed.

If a ſuit be withdrawn before the pleadings ſhall have been completed, the vakeels are entitled to half only of the eſtabliſhed fees; but are to receive the* full amount, as if judgment had been given in the cauſe, when it may be withdrawn after filing the whole of the pleadings.

Fees receivable on miſcellaneous petitions, or motions, not relating to any regular ſuit.

For petitions or motions, not relating to the particular ſuit for which a pleader may have received the preſcribed fee, he is permitted to demand and receive a fee of four annas, for each petition or motion; or, if this appear inſufficient, the court may award him ſuch fee as may be deemed a juſt compenſation for his labour, not exceeding one fourth of the eſtabliſhed fee in a regular ſuit; but in every ſuch ſuit, the fixed rate of fee, as above ſtated, is to be conſidered a full compenſation for all acts done by pleaders relative to the cauſe in which they may be entertained, from the filing of it, until a final deciſion upon it be paſſed and enforced; and they are prohibited from demanding, or accepting from their clients, for pleading their cauſes, any ſum of money, goods, or other valuable conſideration, beſides the fees which are expreſſly authorized.

For all acts relative to a regular ſuit, the eſtabliſhed fee to be deemed a full compenſation; and nothing to be received in addition to it.

Rate of fee, in ſummary proceſſes, and in appeals from

In ſummary proceſſes for the recovery of arrears of rent, or for reinſtatement in the poſſeſſion of land in caſes

* A tax of five per cent, on the amount of all fees payable to the authorized vakeels of the civil courts, is deducted for government in purſuance of Section XXVII, Regulation VI, 1797, and Section XX, Regulation XLIII, 1803. The ſunnuds granted to pleaders are alſo required, by thoſe regulations, to be written upon ſtampt paper, bearing a duty of twenty five rupees.

of

of forcible diſpoſſeſſion, as authorized by the regulations, the fees of any pleaders who may be employed are fixed at one fourth of the fees eſtabliſhed for regular ſuits. They are alſo limited to that proportion by Section XXVI, Regulation XLIX, 1803, in appeals from nonſuits, or diſmiſſals on default. The pleaders of government, who were originally appointed by the ſudder dewanny adawlut, but under Regulation VIII, 1797, (and X, 1803, for the ceded provinces) now receive their appointments, as pleaders for government, from the Governor General in Council, are intitled to the ſame fees in cauſes which they may be authorized to plead on the part of government, as in cauſes between individuals; and are ſubject to the ſame rules; except that the order of government, or of the officer empowered by the regulations to ſuperintend ſuch ſuits on the part of government, is to be delivered and filed, inſtead of the uſual vakalutnamah, as the authority for the public pleader to proſecute or defend the cauſe.

nonſuits or diſmiſſals on default.

Pleaders of government, by whom appointed; and to what fees intitled.

Authority to be delivered by them, inſtead of a vakalutnamah.

PLEADERS guilty of diſreſpect in open court are liable to a fine, not exceeding one hundred rupees. If convicted of promoting litigious ſuits, or of fraud, or of any groſs miſbehaviour, though not relating to cauſes in which they may be concerned, they are to be ſuſpended; and upon report (to be made within one month) to the ſudder dewanny adawlut, may be fined or diſmiſſed. A pleader wilfully delaying the ſuit of his principal, for his own advantage, is declared liable to proſecution by the latter, for damages; and all parties are at liberty to proſecute the pleaders who may have been employed by them, for any breach of the regulations; as well as for any fraudulent practices regarding the ſuits committed to them. Any party diſſatisfied with the conduct of his pleader may alſo, at any ſtage of the trial previous to the deciſion, withdraw the powers delegated to him; and by a new vakalutnamah appoint another pleader, who in ſuch caſe is excluſively intitled to receive the

Pleaders guilty of diſreſpect, promoting litigiouſneſs, fraud, or other miſbehaviour, how to be proceeded againſt.

In what caſes liable to proſecution for damages.

Parties may, at any time, change their vakeels.

Perſons employed as pleaders, when the cauſe is decided, are exclusively intitled to the fee upon it.

the eſtabliſhed fee. In like manner, if a pleader be removed from his office, or reſign, or die, previouſly to the deciſion of any cauſe in which he may have been entertained, neither he or his heirs can claim any part of the fees in ſuch cauſe. They are to be paid, in all caſes, to the perſons who may be acting as pleaders when the cauſe is brought to a deciſion; and are to be then levied without delay, whether the deciſion be appealed from, or otherwiſe.* Parties are conſidered anſwerable for the fees of their own pleaders, although the judgment may be in their favor, if the amount cannot be recovered from the oppoſite party. But in ſuch caſes, if the amount of the eſtabliſhed fee appear to exceed a juſt compenſation to the pleader or pleaders employed; the judge is authorized and required to levy ſuch part only of the eſtabliſhed fee as may appear to him an adequate compenſation; leaving the remainder to be recovered from any property that may be ſubſequently found to belong to the party caſt. Laſtly, it is provided that no part of the regulations is to be conſtrued to prohibit or prevent any individual from appearing and pleading his own cauſe in perſon.

Fee to be levied, on deciſion, whether appealed from, or not.

And parties anſwerable for the fees of their own pleaders, if not recoverable from the oppoſite parties.

Proviſo, in ſuch caſes.

Any individual may plead his own cauſe, inſtead of employing a vakeel.

Remarks upon the preceding rules, and the reſult of their operation.

This proviſion reſtricts the operation of the rules, for the appointment of pleaders, to parties who may not be able, or may not find it convenient, to attend the courts of juſtice; or who may for any reaſon prefer, to their own attendance, the employment of an eſtabliſhed pleader for proſecuting or defending the cauſes in which they may be engaged. If all the advantages expected from an eſtabliſhment of authorized pleaders, under the rules above ſtated, have not been yet obtained; it muſt be aſcribed more to neglect on the part of the vakeels appointed, to qualify themſelves for their ſituations, and for the due performance of the duty required from them; than to any defect in the regu-

* It has further been determined by the ſudder dewanny adawlut (on the 3d December 1795, and 16th July 1800) that the fees due to pleaders ſhould be levied in execution of decrees, from the parties or their ſureties, in preference to all other ſums adjudged.

lations,

lations, the liberal compenſation allowed by which is ſufficient to render the office of a native pleader reſpectable and deſirable.* It may be hoped therefore that as the prejudices, which formerly exiſted againſt the profeſſion of a vakeel, ceaſe to exclude men of education and character from engaging in it; as the courts are enabled to ſelect men of that deſcription, in conformity with the regulations, for filling all vacancies that may occur; and as the perſons appointed to act as pleaders become, by experience, (aided by the attention and direction of the courts in which they are employed) better acquainted with the laws and regulations, and with the proper forms of pleading under them; the appointment and control of a regular eſtabliſhment of pleaders will be productive of the full benefit intended by it. In the words of the preamble to Regulation VII, 1793, "the advantages of the plea-

Means of rendering the appointment and control of eſtabliſhed pleaders productive of the benefit intended by government.

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* As materially connected with this object, the following copy of a circular letter from the regiſter of the ſudder dewanny adawlut, to the provincial courts of appeal, written by order of government, on the 2d September 1802, is here inſerted; in the hope that a general obſervance of the rule contained in it may promote conciliation; and obviate unneceſſary humiliation, where it is impoſſible to ſuppoſe an intention of inſult; or a want of that reſpect to Europeans, particularly to the officers of government, which is ſhewn ſo manifeſtly and univerſally, in every other mode; conſiſtently with the eſtabliſhed uſages of the country.

"An inſtance has lately occurred, in which an Engliſh gentleman, filling an office under a court of juſtice, refuſed to admit the vakeels and native officers of the court to appear before him with their ſlippers on, according to uſage, for the purpoſe of tranſacting public buſineſs.

"It became neceſſary in conſequence to refer to His Excellency the Moſt Noble the Governor General in Council the queſtion of the propriety of maintaining the practice thus objected to; and the court of ſudder dewanny adawlut, to a report of the practice hitherto obſerved in that court, added their opinion that it is not, in any wiſe, derogatory to the dignity of a court of juſtice, nor diſreſpectful towards any of its officers, to allow natives of India, *as heretofore*, to appear before them with ſlippers, in apartments where floors are not prepared for ſitting on, in the manner obſerved within the houſes of natives themſelves.

"His Excellency in Council has been pleaſed to expreſs his entire concurrence in this opinion, and has judged it proper to direct, that natives ſhall not be prevented from wearing their ſlippers, at any place, or upon any occaſion, where by cuſtom, already eſtabliſhed, it has been uſual to admit them with their ſlippers.

"To guard againſt any recurrence of oppoſition to the practice, and prevent the diſſatisfaction which muſt ever ariſe from the ill judged and impolitic prohibition of any general and long eſtabliſhed uſage, His Excellency in Council has been further pleaſed to direct, that his orders be circulated to the courts of juſtice for their information and guidance. The ſudder dewanny adawlut have accordingly directed me to communicate the ſame to your court; and to deſire that you will extend the communication to the ſeveral courts within your diviſion."

ders,

" ders will then be proportionate, to their zeal, abilities and " integrity ; at the ſame time that their exertions to acquire re- " putation and emolument will neceſſarily conduce to the im- " provement of the judicial ſyſtem. By the erection of tribu- " nals, conſtituted upon the principles of the courts of juſtice " eſtabliſhed under the regulations, and confining the plead- " ing of ſuits to perſons poſſeſſing the qualifications, and ac- " ting under the rules, preſcribed ; individuals will be ſatisfied " that perſonal ſolicitation and intrigue are not requiſite, either " to obtain their own rights, or to defend themſelves from " oppreſſion, or the unjuſt claims of others. They will feel " that they have an impartial, and all powerful protector in the " laws ; and that through the means of the public pleaders, they " can at all times command the exerciſe of the judicial powers " of government lodged in the courts, for the redreſs of any " injuries which they may ſuſtain, either in their perſons or " property."

R. XXXVIII, 1795, extended to Benares by R. LX, 1795. R. VI, 1797. R. V, 1798. R. XLIII, 1803 R. XLIX, 1803

Reaſons for re-eſtabliſhing a fee on the inſtitution of civil ſuits; which was diſcontinued in 1793.

On the introduction of the new judicial ſyſtem in 1793, a fee which had before been levied upon the inſtitution of ſuits in the civil courts, varying from five to two per cent in proportion to the cauſe of action, was aboliſhed ; and that every poſſible relief might be given to ſuitors, who ſhould be compelled to have recourſe to judicial proceſs, for the recovery of their rights, no expenſe whatever, beyond the fee of the pleaders whom they might chuſe to entertain, and the actual charge incurred in ſummoning their own witneſſes, was annexed to the proſecution of any civil ſuit, or appeal. But experience having ſhewn that many groundleſs and litigious ſuits were inſtituted, in conſequence of this remiſſion of the fee before levied ; and that many ſuperfluous exhibits were filed, from their not being ſubject to any charge ; whereby, as well as by ſummoning a number of unneceſſary witneſſes, the buſineſs of the courts was much increaſed ; and the deciſion of cauſes materially delayed ; it was enacted by Regulation XXXVIII,

1795,

1795, that an inſtitution fee ſhould be again paid upon ſuits, which might be thenceforth filed in the ſeveral courts of civil judicature; or which were then depending, and might not be withdrawn. Alſo, that a ſmall fee ſhould be levied on all exhibits filed in future in the civil courts; and upon all ſummonſes or orders for the attendance and examination of witneſſes. The rates of fees firſt eſtabliſhed on theſe accounts have been ſince altered and raiſed by Regulation VI, 1797, (and Regulation XLIII, 1803, for the ceded provinces;) but the inſtitution fee is ſtill leſs than what was paid under the judicial regulations which were in force before the year 1793. The rates now preſcribed are, from one anna per rupee, on ſums not exceeding 200 rupees; to eight annas, or half per cent, on ſums above 50,000 rupees; according to the amount or value of the cauſe of action.* The amount received on account of this fee, upon ſuits inſtituted before the native commiſſioners in their capacity of munſiff, or arbitrator, or referred to them from the zillah or city courts in their capacity of referee, is allowed, upon the determination or adjuſtment of ſuch ſuits, to the commiſſioner by whom they may have been decided upon an inveſtigation of the merits; or before whom they may have been depending when adjuſted by razeenamahs of the parties. But the fee is not receivable by any commiſſioner for ſuits which may be diſmiſſed for non-attendance, or upon any other ground of default, without a determination upon the merits of the caſe. The zillah and city regiſters, by whom any ſuit referred to them may be determined on an inveſtigation of the merits of it, or before whom

Alſo, a fee upon exhibits; and ſummonſes for witneſſes.

Original rates of fees have been altered.

Preſent rates of inſtitution fee.

In what caſes the inſtitution fee is allowed to the native commiſſioners.

A moiety allowed, in certain caſes, to the zillah and city regiſters.

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* The following table for calculating the inſtitution fee upon regular ſuits, at the preſcribed rates, was ſuggeſted by the gentleman before referred to.

On ſums not exceeding 200 ſicca rupees, 1 anna per rupee.

				Rs.	As.
Ditto, -	ditto 1000	——	per cent	4 +	4 8
Ditto, -	ditto, 5000	——	ditto,	3 +	14 8
Ditto, -	ditto, 25,000	——	ditto,	2 +	64 8
Ditto, - -	ditto, 50,000	——	ditto,	1 +	314 8
Ditto,	exceeding ditto,	——	ditto,	½ +	564 8

a ſuit may be depending when adjuſted by the razeenamahs of the parties, are entitled to receive a moiety of the fee paid upon the inſtitution of ſuch ſuit. The remaining moiety of the fee paid in ſuch cauſes, and the entire fee paid upon all original cauſes, or appeals, decided by, or adjuſted before, the judges of the zillah and city courts, the provincial courts, and the ſudder dewanny adawlut, as well as the fee paid upon the inſtitution of ſuits diſmiſſed on default by the zillah and city regiſters, or by the native commiſſioners, are carried to the account of government.

Remaining moiety, and the entire fee in other caſes, carried to the account of government.

R. VI, 1797, § V, VI, VII, and X. R. VII, 1800, § XX, and XXII. R. XLIII, 1803, § V, VI, VII, and X.

Rates of exhibit fee, and of fee upon ſummonſes, or orders for examination of witneſſes.

THE exhibit fee, to be levied on all documents exhibited in evidence upon the trial of ſuits before the zillah and city judges, or regiſters, and upon the trial of appeals in the provincial courts and ſudder dewanny adawlut, is fixed at the rate of eight annas, if the cauſe of action ſhall not be above two hundred rupees; one rupee, if the cauſe of action ſhall exceed two hundred, but not be more than one thouſand ſicca rupees; or two rupees, if the cauſe of action ſhall exceed one thouſand ſicca rupees; on every exhibit which may be filed in the above courts, in evidence of any fact relating to cauſes or matters depending before them reſpectively. The ſame rate of fee is alſo fixed for every witneſs, who may be ſummoned, or ordered to be examined on commiſſion, by any of thoſe courts. The fees on both theſe accounts are to be paid when the exhibits are filed, or when the ſummonſes, or commiſſions for the examination of witneſſes, are iſſued; and are to be carried to the account of government. No fee, of either of theſe deſcriptions, however, is payable on exhibits delivered to, or ſummonſes or commiſſions for witneſſes iſſued by, any native commiſſioner; and it has been explained that in caſes of appeal from the deciſions of the native commiſſioners to the zillah and city courts, the exhibit fee is to be taken on the exhibits delivered upon the trial of the appeal only.

When payable, and on whoſe account.

Not payable on exhibits delivered to, or ſommonſes iſſued by, the native commiſſioners.

What papers delivered to the zillah, city, and provincial courts, or to the ſudder dewanny adawlut, are required to be upon ſtampt paper.

It is further preſcribed by the regulations for levying a ſtamp duty on account of government, that the pleadings in civil ſuits, tried by the judges or regiſters of the zillah and city courts, by the provincial courts, and by the ſudder dewanny adawlut, as well as all miſcellaneous petitions preſented to thoſe courts, ſhall be written on ſtampt paper, of a certain ſize and deſcription, for every roll or part of a roll, expended in which, the following rates of duty are payable, as ſpecified in the ſtamps. If the cauſe of action be not above one hundred ſicca rupees, four annas; if above one hundred, but not exceeding two hundred ſicca rupees, eight annas; if above two hundred, but not exceeding one thouſand ſicca rupees, one rupee; if above one thouſand ſicca rupees, two rupees. Petitions of plaint preferred to the zillah and city courts, and referred from them to the native commiſſioners, are required to be written upon ſtampt paper, in common with other petitions preſented to thoſe courts; but the ſubſequent pleadings, deliverable to the native commiſſioners in cauſes referred to them, are declared not to be within the proviſions for ſtampt paper. All copies of papers furniſhed to any perſon at his own application, or in conſequence of any regulation requiring him to take ſuch copies, by the zillah or city courts, the provincial courts, or the ſudder dewanny adawlut, are however required to be written on ſtampt paper, of a particular deſcription, bearing a duty of two annas, four annas, eight annas, or one rupee, according to the ſize of the paper. But it has been explained that ſtampt paper is not requiſite for any copies, or abſtracts, tranſmitted by the courts of judicature to the board of revenue, or collectors; to the ſuperior courts, or Governor General in Council; or for any copies of decrees, (or other papers) * prepared by the courts to remain with their own records.

Pleadings delivered to the native commiſſioners not included in this rule.

What copies of papers, furniſhed by the courts mentioned, are alſo required to be on ſtampt paper.

In

* Decrees only are ſpecified in Regulation VII, 1800, Section XVIII; but the obvious intention of it includes all copies of papers prepared by the courts to remain with their own records, as has been declared, on more than one occaſion, by the court of ſudder dewanny adawlut.

What paper to be uſed for decrees.

In conſideration of the greater durability of Engliſh paper, it is directed that all decrees of the zillah, city, and provincial courts, and the court of ſudder dewany adawlut, ſhall be written upon paper of Engliſh manufacture, bearing a ſtamp duty of one rupee per ſheet; and as the regulations require that authenticated copies of all decrees be prepared for delivery to the parties, they are to be held liable (paupers excepted) to the payment of the eſtabliſhed duty on the ſtampt paper uſed for copies of decrees, ſo prepared for them, whether they attend to take out the ſame, or otherwiſe *. The ſame principle is to be applied to any copy of orders, or proceedings, which a party may be required to take; and which may be prepared on ſtampt paper in conſequence; but not to any other copies of orders, or proceedings, which the parties are not required to take, and which they may not apply for. Any European or native officer of a court of judicature, who ſhall file, or knowingly allow any perſon to file, any pleading not written on ſtampt paper, as required by the regulations; or who ſhall furniſh or make, or knowingly allow any perſon to furniſh or make, * a copy of any record or paper belonging to the court to which he may be attached, except on the preſcribed ſtampt paper; or who ſhall atteſt any copy not written on ſuch paper; is declared liable to diſmiſſion from his office; and the copies ſo illegally made, or atteſted, are not to be admitted in evidence;

And rule for payment of ſtamp duty thereupon; whether the decree be taken out or not.

To what other copies the ſpirit of this rule is applicable.

Penalty for a wilful breach of the ſtamp regulations by any European or native officer of a court of juſtice.

And illegal copies not to avail the party filing.

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adawlut. It is alſo clearly inferable from the explanation given in the above regulation and ſection, "that it was not intended to require any copies of judicial papers to be made upon "ſtampt paper, *excepting ſuch as might be furniſhed to the parties in cauſes, their vakeels, or* "*other perſons*, on their application, or in conſequence of any regulation requiring them to take "ſuch copies."

* The judge of zillah Bahar was informed by the ſudder dewanny adawlut, on the 16th January 1799, that the ſtamp duty on decrees forms part of the coſts of ſuit; and ſhould be levied accordingly.

† The court of ſudder dewanny adawlut, on conſideration of the terms of this clauſe, (in Section XVIII, Regulation VI, 1797,) informed the provincial, zillah, and city courts, on the 25th July 1800, that parties or vakeels cannot be permitted to make copies, for their own uſe, of any records or papers belonging to the courts, except on ſtampt paper. But they are allowed to take, upon unſtampt paper, extracts, or memoranda, to enable them to plead in depending cauſes; and there is no prohibition againſt their furniſhing each other, upon any paper, with copies of their reſpective pleadings, or other documents.

not

nor the pleading, ſo illegally written, to avail the party who may have filed the ſame; until a penalty be paid of ten times the amount of the ſtamp duty, which would have been payable on ſuch pleadings or copies, if they had been written on the preſcribed ſtampt paper. Native officers who may file any pleading, petition or document *, required to be upon ſtampt paper, which ſhall not be written on the preſcribed paper, or who ſhall furniſh a copy of any judicial paper, or proceeding, required to be upon ſtampt paper, upon any other paper than that preſcribed, are further declared liable (beſides diſmiſſion from office) to a fine to government, recoverable by ſummary proceſs in the civil courts, equal to ten times the amount of the ſtamp duty which would have been payable if the preſcribed paper had been uſed for ſuch pleading, petition, document, or proceeding.

them without payment of ten times the preſcribed ſtamp duty.

Native officers further liable to a fine, of ten times the duty, in ſuch caſes.

It has been explained by Section VII, Regulation V, 1798, that the fee, directed to be paid upon the inſtitution of ſuits in the zillah and city courts, was eſtabliſhed with a view to regular ſuits, inſtituted for trial under the rules preſcribed in Regulations III, and IV, 1793, and not to be taken on ſummary ſuits, for recovering the poſſeſſion or rent of land. It is further provided by Section XXVI, Regulation XLIX, 1803, that no inſtitution fee is to be levied upon the ſummary appeals allowed in caſes of nonſuit, or diſmiſſal on default, without an

R. V, 1798, § VII.
R. VII, 1799, § XVIII.
R. XXVIII, 1803, § XXXV.
Inſtitution fee not demandable on ſummary ſuits.

R. XLIX, 1803. § XXVI.
Nor on ſummary appeals in caſes of nonſuit, or diſmiſſal on default.

* Beſides the pleadings and copies of judicial papers ſpecified, obligations for the payment, and acknowledgements for the receipt, of money, exceeding ſixteen ſicca rupees, (excepting obligations and acknowledgements, on the part of government; or for money payable to, or receivable by government; or on account of the rent of land paying revenue to government;) as well as all deeds of contract and agreement, or other legal inſtruments, and all copies of ſuch, which may be prepared as legal vouchers (excepting deeds to which government may be one of the contracting parties) and all petitions or applications to the board of revenue, collectors, or other revenue officers, and copies of any papers furniſhed to individuals by ſuch officers, are likewiſe required by the regulations to be upon ſtampt paper; as will be more fully ſtated in the third part of this analyſis. On the 14th Auguſt 1801, the ſudder dewanny adawlut declared the receipts of pleaders for their fees, and vakalútnamahs, moktarnamahs, ſecurity bonds, ikrarnamahs, and razeenamahs, delivered to the courts of juſtice, to be within the proviſions of Sections IV and V, Regulation VII, 1800; the payment for fees being from individuals to individuals, though made through the courts; and the above deſcriptions of papers being all *legal inſtruments*.

inveſtigation

inveſtigation of the merits of the claim; and by Section XVIII, Regulation VII, 1799, (re-enacted for the ceded provinces by Section XXXV, Regulation XXVIII, 1803,) that neither the inſtitution fees, or fees upon exhibits, are to be levied in the ſummary proceſſes for arrears of rent authorized by thoſe regulations. But the rules for ſtampt paper are to be conſidered applicable to ſuch proceſſes; as in all other caſes wherein ſtampt paper is required to be uſed, whether for original papers, or for copies.

Neither exhibit or inſtitution fee to be levied in ſummary proceſs for arrears of rent.

But rules for ſtampt paper applicable to ſuch, and to all caſes wherein it is required.

THE courts of juſtice however are empowered to diſpenſe with the payment of the inſtitution fee, the exhibit fee, the fee upon ſummonſes or commiſſions for the examination of witneſſes, and the duty upon ſtampt paper; as well as with the ſecurity required for the payment of the fees of pleaders; in all caſes of poverty, and inability to make ſuch payments; or to furniſh ſuch ſecurity. In miſcellaneous matters, not connected with any cauſe to be inſtituted, or depending before the civil courts, they are authorized to diſpenſe with the payment of the preſcribed fee, and to furniſh ſtampt paper free of duty, upon the oath of the party, and any evidence of his poverty which they may deem ſufficient. But for the admiſſion of parties to inſtitute an original ſuit, or appeal, as paupers, and for employing an authorized pleader to proſecute the ſame, it is directed that their inability to pay the inſtitution fee, and to give the ſecurity required for the fees of pleaders, be proved to the ſatisfaction of the court, by the oath of the plaintiff or appellant *; and by the evidence of two credible witneſſes, who are to be ſworn that they

R. XLVI, 1793, extended to Benares by R. XXIII, 1795.
R. VI, 1797, § IX, X, and XIX.
R. X, 1797, § XIII.
R. VII, 1800, § XVI.
R. XIV, 1803.
R. XLIII, 1803, § IX, X, XIII, and XVI.

Courts of juſtice empowered to diſpenſe with the payment of ſtated fees, and ſtampt duty; and with ſecurity for the fees of pleaders; in behalf of paupers.

Evidence of poverty required in ſuch caſes.

* On the petition of RAJISERER DEBA to prefer an appeal in *formâ pauperis* upon her cuſſumnamah or ſolemn declaration, without oath, the court of ſudder dewanny adawlut (October 11, 1797,) rejected her application; as not being conformable to Section II, Regulation XLVI, 1793, which expreſsly requires the oath of the party; and as the appellant was a woman of rank, her oath was directed to be taken by commiſſion, in the mode provided by Section VI, Regulation IV, 1793, for female witneſſes who may be reſtricted by the cuſtoms of the country from perſonal appearance in a court of juſtice.

believe

believe ſuch oath to be true. The plaintiff, or appellant, in *formâ pauperis*, is alſo to find two good and ſufficient ſureties for his appearance whenever his attendance may be required by the court. If the party, ſo admitted as a pauper, ſhall gain his ſuit, or appeal, the courts are to cauſe the defendant, or reſpondent, to make good the amount of all fees demandable from the pauper; or ſuch part thereof as may be adjudged payable by the former under their decree. If the claim of a plaintiff, admitted to ſue as a pauper in any zillah or city court, be not eſtabliſhed; and the judge or regiſter, by whom the ſuit may be diſmiſſed, ſhall deem it groundleſs and vexatious; and the plaintiff ſhall not pay the amount of his own fees, and the fees and coſts which may be awarded againſt him in favor of the defendant; the court is authorized and required, whether he ſhall appeal from the judgment paſſed againſthim, or otherwiſe, to commit him to cloſe cuſtody, for any period of time not exceeding three months. If the plaintiff's ſureties ſhall not produce him, ſo that he may be proceeded againſt as directed; and ſhall not cauſe the fees and coſts adjudged againſt him to be paid, the court is required to commit ſuch ſureties to jail for any period not exceeding three months. At the expiration of that period, the ſureties, or the plaintiff himſelf, if confined under an original judgment, are to be relcaſed. But in the event of an appeal, if the court by whom the appeal may be heard ſhall find the ſame groundleſs and vexatious; and ſhall conſequently confirm the original judgment; it is authorized to commit the litigious appellant, or his ſureties, if they ſhall not produce him, to be confined for ſuch time as may be judged proper on conſideration of the circumſtances of the caſe; not exceeding ſix months, incluſive of any confinement ordered on the orginal trial. In caſes of appeal by paupers to the ſudder dewanny adawlut, that court is further authorized to extend the confinement of litigious appellants to any period not exceeding one year; incluſive of the confinement which may have been ordered by the zillah, city

Sureties for appearance to be found by paupers.

Fees by whom to be paid, if the pauper gain his ſuit.

Proceſs againſt paupers, and their ſureties, if their claims be diſmiſſed, and appear vexatious.

Fees and coſts adjudged againſt paupers recoverable from any property ſubſequently found to belong to them.

city, or provincial courts. Moreover, if a plaintiff, or appellant, who may have ſued as a pauper, and have been caſt, ſhall not pay the fees and coſts adjudged againſt him; and ſhall be afterwards found to poſſeſs property ſufficient to make good the ſame; the courts are directed to proceed againſt ſuch property for the recovery of the amount due, whether the ſuit ſhall have been pronounced litigious or otherwiſe.

Authorized vakeels permitted, and in certain caſes may be required, to undertake the cauſes of paupers under the proviſions ſtated.

The authorized pleaders in the ſeveral courts are permitted to undertake the cauſes of paupers under theſe proviſions; and if a pauper ſhall be unable to prevail on any of the vakeels to undertake his ſuit; the court, on being ſatisfied of his inability to plead the cauſe in perſon, may require one of the eſtabliſhed vakeels to undertake and plead it for him; recording the reaſons which may induce an exerciſe of this power.

Relief provided by the regulations for parties affected by litigious claims of paupers.

The proviſions made for facilitating the attainment of juſtice to paupers having been found to encourage groundleſs and exaggerated claims, which are proſecuted as far as the regulations allow, with a view to harraſs the defendant or to compel admiſſion of what may not be juſtly due from him; it was deemed proper, in addition to the extended impriſonment of litigious appellants, now authorized for the puniſhment of ſo flagrant an abuſe, to provide, as far as poſſible, for the relief of the parties affected thereby. The

Security.

diſcretion veſted in the courts, with reſpect to the ſecurity required from defendants, and the fees of their pleaders when

Fees of pleaders.

the plaintiff's claim may be diſmiſſed with coſts, but his property may not be ſufficient to make good the ſame, has been already mentioned. It is further provided by Section V,

Inſtitution fee.

Regulation III, 1802, that "if on the ſuit of a pauper plaintiff, tried by a native commiſſioner, or by a zillah or city "regiſter, or by the judge of a zillah or city court, a judg-"ment be paſſed in favor of the plaintiff; and the defendant "appealing from ſuch judgment, ſhall obtain a reverſal of "it,

" it, with coſts; ſo that the final judgment may be in favor " of the defendant; and the original claim be declared ground- " leſs; the inſtitution fee paid by ſuch defendant, upon his " appeal, ſhall be returned to him by the court into which " the ſame may have been paid, and the amount ſhall be " recovered from the pauper againſt whom the final judg- " ment may be paſſed, in the event of his being found to " poſſeſs property ſufficient to make good the ſame, as pro- " vided in Section III, Reglation XLVI, 1793. In all other " caſes, the court of ſudder dewanny adawlut is authorized " to direct a return of the inſtitution fee, or otherwiſe, as on " due conſideration of the circumſtances of the caſe, whe- " ther brought before them in appeal, or referred to them " by a provincial, zillah, or city court, may appear to them " juſt and proper." *

General power veſted in the ſudder dewanny adawlut, to direct return of inſtitution fee when it may appear juſt and proper.

It being eſſential to the due adminiſtration of juſtice, that the law officers of the courts of judicature ſhould be qualified by their knowledge and characters for the diſcharge of the important truſt repoſed in them; and that perſons poſſeſſing the requiſite qualifications ſhould be encouraged to expound the laws with independence and integrity, by an aſſurance of their continuance in office whilſt they perform their duty with uprightneſs; it is enacted by Regulation XII, 1793, (and Regulation XI, 1803, for the ceded provinces) that " the " law officers of the ſudder dewanny adawlut, the nizamut

R. XII, 1793, extended to Benares by R. XI, 1795. R. XI, 1803. R. V, 1804. Rules for the nomination, appointment, and removal, of the law officers of the courts of judicature, civil and criminal.

* In the caſe of an interlocutory appeal, the ſudder dewanny adawlut, (on the 15th March 1798,) refuſed to return the inſtitution fee paid on the appeal, but informed the appellant, that he would not be liable to any further inſtitution fee, in the event of his preferring a ſecond appeal from the final deciſion. The ſame principle has been ſince adopted in Section XXII, Regulation XLIX, 1803, relative to appeals from deciſions of the native commiſſioners. On the recent application of a provincial court, to aſcertain whether an appellant paying the inſtitution fee, and afterwards failing to give the preſcribed ſecurity for the admiſſion of his appeal, be, on the rejection of it, intitled to receive back the inſtitution fee paid by him; the court of ſudder dewanny adawlut (on the 9th July 1805) determined, that the appellant, cannot, of right, demand repayment in ſuch caſe, (the fee being forfeited, as in other caſes of default,) but that if under any particular circumſtances (ſuch as real inability to give the required ſecurity) it appear juſt and proper to return the fee, a reference ſhould be made to the ſudder dewanny adawlut, under Section V, Regulation III, 1802.

" adawlut,

" adawlut, the provincial courts of appeal, the courts of cir-
" cuit, and the zillah and city courts, ſhall be appointed by
" the Governor General in Council; and ſhall not be remov-
" able, but for incapacity or miſconduct in the performance
" of their public duty, or for flagrant profligacy in their
" private conduct, proved to his ſatisfaction." Alſo that " the
" law offices in the ſeveral courts ſhall be conferred on per-
" ſons well verſed in the laws, and of unblemiſhed moral
" characters." The ſame regulations preſcribe an oath to be taken half yearly (for the reaſon before noticed) by the Mahomedan law officers of the ſeveral courts of civil judicature; and a ſolemn declaration, to be made and ſubſcribed by the Hindoo law officers, attached to thoſe courts *. Further proviſion is made by Regulation V, 1804, for the proceſs to be obſerved in the removal of any law officer for incapacity, or miſconduct; as well as for filling up any vacancy which

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* The exemption of Hindoo law officers, in this inſtance, from the oath impoſed upon the Mahomedan law officers, was probably founded on the conſideration of their being, as Pundits and Brahmins, within the deſcription of perſons, who are exempted from being ſworn as witneſſes, if their rank and caſt be ſuch as, according to the prejudices of the country, may render it improper to compel them to take an oath. It has been aſcertained however, from the law officers themſelves, that thoſe prejudices have no juſt foundation in the Hindoo or Mahomedan religion, or law. On the contrary (as ſtated in the preamble to Regulation L, 1803,) " the
" cauzee-ool-cuzat and mooftees of the court of nizamut adawlut, have declared, that there is
" no prohibition againſt an oath to the truth being taken by Muſulmans in any caſe; (although
" it is not required by the Mahomedan law to give validity to evidence in judicial caſes:) and
" from the report of the pundits of the court of ſudder dewanny adawlut, it appears, that the
" Hindoo law not only authorizes, but requires the oaths of witneſſes in civil and criminal caſes;
" and preſcribes the form in which oaths may be adminiſtered to perſons of various tribes,
" regard being had to the importance of the matter in diſpute: that no perſon of whatever
" rank is prohibited from taking an oath in a court of juſtice; nor is there
" any objection, grounded on law or uſage, againſt adminiſtering the oaths pre-
" ſcribed by the law; that Brahmins, rigidly obſervant of the duties of the prieſthood,
" are exempted by one ancient author (GOTUM) from taking an oath, and may therefore be
" heard as witneſſes upon their ſimple affirmation; but that the other authorities of the law,
" which do not contain this exemption, prevail over the ſingle text of GOTUM, and declare no
" diſpenſation in favor of any deſcription of perſons; and pronounce no form of oath ſinful,
" excepting as far as the Sooder caſt is reſtricted from handling certain idols; and that the form
" now in uſe, of ſwearing by water of the Ganges, and by copper and toolſy, is virtually
" ſanctioned by many Shaſters; but that other preſcribed forms are of equal validity; and
" that all oaths made by laying the hand on any ſymbol or image of the deity have the
" ſame obligation." The regulation, from which the above quotation is taken, adds

" under

which may occur in a law office, from removal, reſignation, or death. The grounds of removal, with the defence of the party, and the qualifications of the propoſed ſucceſſor, are to be reported, in all ſuch caſes, through the court of ſudder dewanny adawlut, or nizamut adawlut, for the approbation and orders of the Governor General in Council; as ſubſequently ſtated with reſpect to the principal miniſterial officers of the courts. The rules hereafter noticed, regarding charges of corruption and extortion againſt the native miniſterial officers of the civil and criminal courts, are alſo declared applicable to charges of a ſimilar nature againſt the Hindoo or Mahomedan law officers; with the following qualifications. An appeal lies to the ſudder dewanny adawlut, from all deciſions paſſed by the provincial courts, on a charge of corruption or extortion againſt a law officer, whatever may be the amount adjudged; or whether the charge be proved or otherwiſe. A copy of the final decree, or any decree not appealed from, in ſuch caſes, is to be tranſmitted to the Governor General in Council; who has reſerved to himſelf the power, when the charge may be eſtabliſhed, of diſmiſſing the offender from his office; or of both diſmiſſing him and declaring him incapable of holding any future employment under government; in addition to the judgment he is liable to for refunding the amount, or value, of any money, or property, proved to have been corruptly received or extorted; and the payment of a fine to government of three times

What rules applicable to charges of corruption or extortion againſt a law officer.

Special proviſions in ſuch caſes

" under theſe authoritive expoſitions of the Mahomedan and Hindoo laws, it may be ex-
" pected that the erroneous prejudice, which has ariſen againſt taking an oath, will, in
" time, ceaſe, and that all perſons of whatever rank or caſt, or of whatever religious perſuaſion,
" will be ready, when called upon for their evidence in a court of juſtice, to eſtabliſh its
" truth by the ſolemn appeal of an oath; eſpecially if allowed to do ſo in any of the preſcribed
" forms which may be practicable, and ſuitable to the occaſion." This object is highly deſirable for the ends of juſtice; and as the exemption of any particular deſcription of perſons, from taking an oath, tends to depreciate the credit of thoſe upon whom it is impoſed; and conſequently to maintain the prejudice againſt being ſworn; it may be adviſable to diſcontinue the diſpenſation in favor of rank and caſt, which is now allowed. The frequent, and in ſome reſpects degrading, repetition of a retroſpective oath, impoſed upon the Mahomedan law officers, (if not that required from the Moſulman Vakeels) might alſo perhaps be diſcontinued without danger of any ill conſequence; and many reſpectable public officers would be highly gratified by it.

the

the amount. The Governor General in Council has likewiſe reſerved to himſelf the power of ſuſpending any law officer, againſt whom a charge of corruption or extortion may be preferred, until a final deciſion ſhall be paſſed upon the charge; whenever it may appear to him expedient.

R. III, 1793, § XIII, extended to Benares by R. XII, 1795. R. XII, 1803. R. V, 1804.

Regiſters and other miniſterial officers, who are covenanted ſervants of the Company, by whom appointed; and oath to be taken by them.

THE regiſters to the courts of civil judicature, and their aſſiſtants, as well as all miniſterial officers of the civil and criminal courts who may be covenanted ſervants of the Company, are appointed by the Governor General in Council; and previouſly to entering upon the execution of the duties of their offices are required to take and ſubſcribe, in open court, before the judge or judges of the court to which they may be attached, the oath preſcribed in Section III, Regulation XIII, 1793, re-enacted for the ceded provinces by Section III, Regulation XII, 1803. The "regiſters to the civil "and criminal courts are to perform all ſuch official acts as "may be preſcribed to them by the judges of the courts; "who are empowered to aſſign to miniſterial officers, attached "to their ſeveral courts, the particular duties or buſineſs to "be performed by them reſpectively." They are alſo required, with their aſſiſtants, and the native officers attached to the courts, "to procure all acts of the courts to be executed; "in the manner and conformably to the rules which the "judges of the courts may think it proper to preſcribe."

Official acts to be performed by them.

Judicial powers veſted in the zillah and city regiſters.

The judicial powers which the zillah and city regiſters are authorized to exerciſe, in ſuits within the preſcribed limitation referred to them by the judges, have been already mentioned; and it will be ſufficient to add, in this place, that the regiſters and aſſiſtants to the civil and criminal courts are reſtricted from the exerciſe of any judicial powers, except in caſes expreſsly provided for by the regulations.

R. IV, 1796, § VI. Reſtriction.

R. V, 1804. Rules for the appointment and removal of

FOR the purpoſe of enſuring a faithful, diligent, and able diſcharge of the duties aſſigned to the native miniſterial officers

cers employed in the judicial and other public departments; that ſuch officers (with an exception to certain deſcriptions of public ſervants, who are nominated, and removed upon ſufficient cauſe, by their immediate ſuperiors, under the reſponſibility of the latter for their good conduct) may be ſecured in poſſeſſion of their reſpective offices, whilſt they perform their duties with diligence, ability and integrity; and that the perſons appointed to fill all vacancies in ſuch offices may be ſelected with due regard to their characters and qualifications; rules for the appointment and removal of the native officers of government in the judicial, revenue, and commercial departments, have been preſcribed by Regulation V, 1804; under which the confirmation and removal of the head miniſterial native officers employed in the courts of ſudder dewanny adawlut and nizamut adawlut, the provincial courts of appeal and circuit, the zillah and city civil courts and the courts of the magiſtrates in the ſeveral zillahs and cities, are reſerved to the Governor General in Council. The judges of the courts, to which ſuch officers are attached, nominate the perſons to ſucceed, in all caſes of vacancy, from death, reſignation or removal; but are to report to the Governor General in Council, through the ſudder dewanny adawlut, or nizamut adawlut, any information obtained by them of the paſt employment, character, and qualifications of the propoſed ſucceſſor; and the above courts, in ſubmitting ſuch reports to government, are to add whether they are aware of any objections to the propoſed appointment. It is alſo required that all reſignations be received and recorded in open court; and that whenever the judges may ſee cauſe for the removal of any of their head native officers, on the ground of miſconduct, incapacity, or otherwiſe, they ſhall communicate to ſuch officer the grounds upon which they may conſider him underſerving of continuance in his ſtation, and call upon him to ſtate what he may have to offer in his defence. If his anſwer appear unſatisfactory; and they ſhall

the miniſterial native officers.

Head miniſterial native officers.

conſequently

conſequently be of opinion that he ought to be removed; a report of the circumſtances of the caſe, with a copy and tranſlation of the communication made to the officer and his anſwer, and of any proceeding or documents which may be neceſſary for the full information of the Governor General in Council, are to be tranſmitted to him, through the court of ſudder dewanny adawlut, or nizamut adawlut; who are to ſtate their opinion whether there appear to be ſufficient grounds for the diſmiſſion of the officer propoſed to be removed; or, in caſes of reſignation, whether any objection occur againſt accepting the reſignation tranſmitted. The nazirs of the ſeveral courts of judicature, civil and criminal, as well as the police darogahs, tehſeeldars veſted with the charge of the police, and other police officers acting immediately under the zillah and city magiſtrates, are allowed to appoint, and to remove upon ſufficient cauſe, their own naibs, and the inferior public ſervants employed under their direction and control; ſubject to the approbation of the judges and magiſtrates; and to their own reſponſibility, under a penal obligation, in ſuch ſum as may be required by the courts to which they are attached, for the good behaviour of perſons ſo appointed by them. The judges of the ſeveral courts, civil and criminal, are likewiſe veſted with a diſcretion to appoint or remove upon ſufficient cauſe, without reference to ſuperior authority, any other native officers forming part of their public eſtabliſhments, whoſe ſalary, or allowance, ſhall not amount to ten rupees per menſem. But they " are directed to record on their proceedings the " grounds upon which any native officers may be removed by " them, and are required to exerciſe the power veſted in them, " in the appointment and removal of the inferior officers ac- " ting under them reſpectively, with due regard to the pub- " lic ſervice, and the rights of individuals; by ſelecting pro- " per perſons to fill all vacancies in the ſituations of ſuch offi- " cers, and by continuing in office the perſons appointed, " whether by themſelves, or their predeceſſors, whilſt they " diſcharge

Naib-Nazirs, and inferior public ſervants ſubordinate to nazirs, police darogahs, and other principal police officers.

Other native officers, whoſe monthly allowance is leſs than ten rupees.

" diſcharge the duties aſſigned to them with diligence and inte-
" grity." It is further provided, that all native officers employed in the courts of judicature, civil and criminal, whoſe ſalary or other allowance may amount to ten rupees per menſem, or upwards; and whoſe appointment and removal may not have been reſerved to the Governor General in Council; ſhall not be removed from their reſpective offices, without the ſanction of the ſudder dewanny adawlut, or nizamut adawlut; and reports are to be made to thoſe courts, in ſuch caſes, as well as for the confirmation of all perſons nominated to ſucceed, when vacancies may occur in the ſtations of any ſuch officers, from death, reſignation, or removal; ſimilar to thoſe required reſpecting the head miniſterial officers whoſe confirmation and removal are reſerved to the Governor General in Council*.

Native officers whoſe ſalary amounts to ten rupees per menſem; and whoſe appointment and removal are not reſerved to the Governor General in Council.

" THE ſeriſhtadars or other head native officers, moonſhees, " mohrirs, and nazirs of the civil and criminal courts," are required to take and ſubſcribe in open court, before the judge or judges of the court to which they may be attached, the oath preſcribed in Section IV, Regulation XIII, 1793; re-enacted for the ceded provinces by Section IV, Regulation XII, 1803. By the ſame regulations " the miniſterial officers of the civil " and criminal courts (under which deſignation are compre- " hended the regiſters and the aſſiſtants to the regiſters, " or any other ſubordinate officers being covenanted ſervants " of the Company; and all native officers attached to the " courts, excepting the law officers;) are declared amenable

R XIII, 1793. R XII, 1803. Oath to be taken by certain native officers of the civil and criminal courts.

To what courts the miniſterial officers, European and native, are amenable for acts of corruption or extortion

* It is further directed by Section XXI, Regulation V, 1804, that in all detailed ſtatements of eſtabliſhments of native officers, required to accompany any public account, the names of the native officers actually employed, and receiving an allowance of ten rupees per menſem or upwards, ſhall be uniformly inſerted. And by Section XXIII, " the ſeveral officers of government " in the judicial, revenue, and commercial departments, and in the departments of ſalt, opi- " um, and cuſtoms, who are already reſtricted by their official oaths, or by the known declara- " tions and orders of government, from deriving any perſonal advantage whatever from their " fixed eſtabliſhments of native officers, are poſitively prohibited from making any alteration " whatever in the diſtribution of the ſalaries of ſuch officers; or in the number and deſignation " of the ſeveral deſcriptions of native officers, which now compoſe, or may hereafter compoſe, " their authorized eſtabliſhments, without the expreſs ſanction of the Governor General in " Council."

" to

" to the courts, to which they may be reſpectively attached,
" for acts of corruption or extortion. Previouſly however
" to receiving the charge, the courts are to require the com-
" plainant to make oath to the truth of it (or ſubſcribe the
" required declaration if he ſhall come within the deſcription
" of perſons whom the courts are empowered to exempt from
" taking oaths) and give ſecurity in whatever ſum they may
" judge proper, to proſecute the charge without delay."

Oath, or declaration, required from complainants in ſuch caſes.

In what caſes the provincial courts of appeal may receive ſuch charges; and how to proceed thereupon.

The provincial courts of appeal are alſo empowered to receive charges of corruption, or extortion, againſt the miniſterial officers of any zillah or city court relative to any appeal, or matter depending or decided in the provincial courts; or though not relating thereto, if it be proved to their ſatisfaction that the zillah or city court omitted or refuſed to receive the charge when regularly preferred to it, in the firſt inſtance; and to refer the ſame for trial to the zillah or city court, to which the accuſed may be attached; provided the complainant ſhall make the preſcribed oath or declaration, and give the ſecurity required; or if there appear to the provincial court to be any objections againſt referring the charge to the court to which the accuſed is attached, they are to report the ſame to the ſudder dewanny adawlut; which court is empowered to cauſe the charge to be tried by the provincial, zillah, or city court, as it may deem expedient.

Such charges, when receivable and how to be proceeded on, by ſudder dewanny adawlut or nizamut adawlut.

The courts of ſudder dewanny adawlut and nizamut adawlut are, in like manner, empowered to receive charges of corruption or extortion, againſt any miniſterial officer of a provincial court of appeal, court of circuit, zillah or city court, relative to any appeal or matter depending or decided in thoſe courts; or though not relating thereto, if it ſhall be proved to their ſatisfaction, that the charge, when regularly preferred, was not received by the proper court, in the firſt inſtance; nor by the provincial court, on regular application to it after a refuſal of the charge by the zillah or city court; and provided the complainant ſhall make the preſcribed oath or declaration,

and

and give the ſecurity required, may refer the charge for trial to the court to which the accuſed is attached; or if there appear any objections thereto, may cauſe the charge to be tried by the ſudder dewanny adawlut; or, if it be againſt a miniſterial officer of a zillah or city court, by the provincial court of the diviſion in which ſuch court may be ſituated.

To be conſidered civil actions, and proſecuted in civil courts.

CHARGES of corruption, or extortion, againſt the miniſterial officers of any civil or criminal court of judicature, are to be conſidered as civil actions; and to be proſecuted in the civil courts.

Judgment to be paſſed in caſes of conviction.

If the charge be eſtabliſhed, in whole or in part, againſt any ſuch officer, the court is to adjudge him to refund the amount or value of any money or property which he may be proved to have corruptly received; or taken by extortion; and to pay a fine of three times the amount to Government.

Appeal to ſudder dewanny adawlut from all judgments on ſuch charges, againſt a covenanted ſervant of the Company.

From all deciſions paſſed by the provincial courts on ſuch charges, againſt a covenanted civil ſervant of the Company, an appeal lies to the ſudder dewanny adawlut; whatever may be the amount of the decree; and whether the decree adjudge the charge to be proved or not.

Proceſs againſt ſuch officers how to be ſerved and returned.

All proceſs againſt any ſuch miniſterial officer is to be tranſmitted to him, under a ſealed cover, in the form of a letter, directed to his addreſs; and is to be returned in the ſame form, with an endorſement acknowledging the receipt of the proceſs.

Copy of decree to be tranſmitted to Governor General in Council.

A copy of the final decree, or of any decree not appealed from, by which a covenanted ſervant of the Company may be convicted or acquitted, of a charge of corruption or extortion, is to be tranſmitted to the Governor General in Council, who will order the amount of any judgment againſt ſuch officer to be deducted from the allowances payable to him; or take ſuch other meaſures for enforcing it as he may judge expedient.

Who will order enforcement of it.

And, if he judge it proper, will diſmiſs the officer; or ſuſpend him from the ſervice.

It is further declared that the Governor General in Council, provided he ſhall think it proper ſo to do, will diſmiſs ſuch officer from his appointment; or both diſmiſs him from his ſtation and ſuſpend him from the ſervice of the Honorable Company.

Alſo,

Will alſo, if deemed expedient, ſuſpend any officer from his appointment, until a final deciſion be paſſed.

Courts of juſtice may ſuſpend a native officer ſo charged.

And power reſerved to the Governor General in Council to declare him incapable of ſerving government, if convicted.

Option to ſue for damages if the charge be not proved.

Rules for trial, and puniſhment on conviction, of charges of corruption or extortion, againſt any private ſervant or dependant, of the judge of a civil or criminal court.

Alſo, that in caſes, wherein he may judge it expedient, the Governor General in Council will ſuſpend any miniſterial officer, charged with corruption or extortion, from his appointment, until a final deciſion be paſſed on the charge. The courts of juſtice are veſted with a power of ſuſpending any native officer ſo charged, until a final deciſion be paſſed; and if he be convicted of the charge, a copy of the decree is to be tranſmitted to the Governor General in Council, who has reſerved to himſelf the power of declaring any ſuch officer incapable of ſerving government in any future capacity. If the charge be not proved, whether againſt an European or native miniſterial officer, the accuſed is declared to have an option of ſuing the accuſer for damages, in any court of civil judicature to which he may be amenable. Finally, it is provided, that "if a native ſervant or "dependant of any judge of a civil or criminal court of judica- "ture, not being a public officer attached to the court, ſhall extort- "or receive, directly or indirectly, any money or other valu- "able conſideration, under any pretence whatever, from any "party or perſon, on account of any ſuit to be inſtituted, or that "may be depending, or have been decided, in the court, he ſhall "be committed as for a contempt of court, and be puniſhed "by a fine equal to treble the ſum of money extorted or "received, or by impriſonment, or corporal puniſhment, at the "diſcretion of the court; and the judge is required to diſcharge "ſuch ſervant or dependant, and never to employ him, directly "or indirectly, in his public or private capacity. If the offender "ſhall not appeal againſt the decree within the limited time, or "if an appeal ſhall not lie from the deciſion, or if the deciſion "ſhall be confirmed in appeal, the court by which the final "decree may be paſſed, ſhall tranſmit a copy of it to the Go- "vernor General in Council; who, in addition to the penalties "or puniſhments ſpecified in the decree, will, if there ſhall "appear to him grounds for ſo doing, declare the offender in- "capable of ſerving Government in any capacity."

The court of ſudder dewanny adawlut is empowered to permit the judges of the provincial, zillah, and city courts, to adjourn their reſpective courts for any requiſite period, not exceeding one month; ſo that ſuch adjournments collectively do not exceed two months in each year. The provincial, zillah and city civil courts are alſo to be annually adjourned during the Hindoo feſtival called *Duſſarah*, which occurs in the Bengal month Aſſin or Cartic, correſponding with parts of the Engliſh months September and October; and during the Mahomedan feſtival, (or rather faſt) *Mohurrum*, which depending on the lunar year, is not fixed to any particular month. The former adjournment, or Duſſarah vacation, is to commence ten days before that feſtival, and to continue for one month of thirty days. The latter adjournment, or Mohurrum vacation, is to commence five days before this feſtival, and to continue for fifteen days; or, as explained to the provincial, zillah, and city courts by the ſudder dewanny adawlut, with the ſanction of the Governor General in Council, on the 31ſt May 1803, is to commence on the firſt day of the month of Mohurrum; and to continue for fifteen days from that date. When the two feſtivals may coincide, the vacations are blended, and the adjournments to be regulated accordingly. The court of ſudder dewanny adawlut is authorized to adjourn that court during the periods of the two vacations, or otherwiſe, as it may judge proper. The leave of abſence uſually ſolicited by the native officers and vakeels for celebrating the Duſſarah, and Mohurrum feſtivals, and at the ſame time viſiting their families, formed a principal reaſon for authorizing a general adjournment of the civil courts at the periods of thoſe feſtivals; in allowing which, it is further ſtated in the preamble to Regulation III, 1798, the Governor General in Council had it in view "to enable ſuch of the judges and regiſters, as may "require temporary leave of abſence from their ſtations for "any private purpoſe, to apply for the ſame at a period when "the adjournments of the civil courts may admit of it, with "leſs public inconvenience than when both the civil and criminal

R. VI, 1793. § XXIII. R. III, 1798. R. V, 1803. § XXIII. What adjournments of the provincial, zillah, and city courts, may be authorized by the ſudder dewanny adawlut.

R. III, 1798, § II, and III. Two annual vacations, at the Duſſarah and Mohurrum feſtivals.

Reaſons for allowing ſuch vacations.

" minal courts are open; and in conſequence of the op-
" portunity thus given them to apply for leave of abſence
" during the fixed vacations, it is expected they will not
" make ſuch applications, at any other period, except in
" caſes of indiſpenſable neceſſity."

R. IV, 1796.
R. II, 1811, § XV.
R. II, 1803, § XXIII.
R. XII, 1803, § XV
R. XLIX, 1803, § V.
R. II, 1805, § XIV.

Applications for leave of abſence, to whom, and in what manner to be made, by the judges of the provincial, zillah, and city courts; their regiſters, and aſſiſtants.

THE judges of the provincial, zillah and city courts, are reſtricted from leaving their ſtations, except in emergent caſes of indiſpoſition, without the permiſſion of the Governor General in Council; previouſly to granting which, a reference is to be made to the ſudder dewanny adawlut and nizamut adawlut, to aſcertain the ſtate of the public buſineſs depending before the judge or magiſtrate by whom leave of abſence may be deſired; and whether the ſame can be conveniently granted or otherwiſe. Applications for leave of abſence to the regiſters and aſſiſtants are ordered to be made to the Governor General in Council through the court to which they may be attached; and the judges are directed " not to grant leave of abſence to their regiſters or aſſiſtants, without having obtained the previous ſanction of government, except when ſerious indiſpoſition may render it abſolutely neceſſary that they ſhould leave the ſtation immediately; in which event they are to report the circumſtance for the information of government.*" The letter of application, in all caſes, is to ſpecify the purpoſe for which the leave of abſence is applied for, the period for which it is deſired; and if from a zillah or city judge and magiſtrate, the name of the aſſiſtant judge, regiſter, or ſenior aſſiſtant on the ſpot, to whom the charge of the offices of judge and magiſtrate will devolve, if not otherwiſe provided for. When leave of abſence is granted to any zillah or city judge and magiſtrate, it reſts with the Governor General in Council to determine whether to delegate the temporary execution of the duties of judge and magiſtrate, to the aſſiſtant

Duties of a zillah or city judge and magiſtrate, by whom to be performed, during his abſence, or in caſes of death or other caſualty.

* This is not expreſsly included in any exiſting regulation; but has been directed by a general order of government, paſſed on the 11th March 1796, in the terms quoted.

judge,

judge, regiſter, or ſenior aſſiſtant on the ſpot; or to make ſuch other proviſion for carrying on the buſineſs of the ſtation as may appear to him expedient. In caſes of death, indiſpoſition, or other caſualty, wherein the charge of the offices of judge and magiſtrate may devolve to an aſſiſtant judge, regiſter, or ſenior aſſiſtant on the ſpot, without any expreſs proviſion for the ſame having been made by government; an immediate report of the caſe is to be made to the Governor General in Council; till the receipt of whoſe orders, and ſubſequently, if the officer to whom the charge may devolve ſhall not be empowered to officiate as judge and magiſtrate, he is to exerciſe, beyond the diſchage of the proper duties of his own ſtation, ſuch part only of the powers of judge and magiſtrate as may be neceſſary for executing the proceſſes of the ſuperior courts; for preſerving the peace of the diſtrict, or other caſes of emergency; and for performing the duties which (by Section XIV, Regulation II, 1805,) are expreſsly authorized to be performed in ſuch caſes by the ſenior judicial officer on the ſpot.

Report to be made to government in ſuch caſes, and functions to be executed by ſenior judicial officer on the ſpot, until orders be received.

For the purpoſe of preventing injury to public or private rights, or property, by the loſs, deſtruction, or removal, of the records of the courts of judicature; as well as with a view to facilitate the means of reference to them on all occaſions requiring it; two native keepers of the records are appointed for each of the zillah and city courts, civil and criminal; the provincial courts of appeal and circuit; and the courts of ſudder dewanny adawlut and nizamut adawlut. Theſe officers are not removable, except for miſconduct proved to the ſatisfaction of the Governor General in Council, upon reports to be ſubmitted to him, in the manner before ſtated with reſpect to the head miniſterial officers of the courts. They are to keep a regiſter, in the Perſian and Bengal languages in Bengal and Oriſſa, and in the Perſian and Hindooſtanee languages in the other provinces, of all the dewanny and

R. XVIII, 1793, extended to Benares by R. XVIII, 1795. R XXXVII, 1795. R V, 1798, § XVI. R. XIII, 1803. R XLIX, 1803 § XXVII. R V, 1804, § X.

Rules for preſerving records of the courts of judicature.

Appointment of record keepers and their duties.

and foujdarry proceedings, documents, and other records of the courts to which they may be reſpectively attached, in a book to be atteſted by the official ſignature of the regiſters or aſſiſtants; and are to ſee that the judicial records of the courts, committed to their care, are not deſtroyed by inſects, damp, or otherwiſe; as well as that they are not removed without the orders of the courts. For any neglect of this duty; or if any records, entered in their regiſters, ſhall not be forthcoming, and they ſhall not be able to give a ſatisfactory account of them; they are liable to diſmiſſion from their offices. The ſeveral courts of civil juſtice are likewiſe required to keep a book of daily proceedings, in which every order or act of the court is to be minuted, in the languages above ſpecified; with references to the pleadings, depoſitions, exhibits, and other papers read and filed in each cauſe; and to be atteſted with the ſignature of the judge; or in the provincial courts and ſudder dewanny adawlut with the ſignature of the regiſter.* For the information of the latter courts, the zillah and city judges are directed to furniſh a monthly report of cauſes decided, by themſelves, their regiſters, and the native commiſſioners in their reſpective juriſdictions. Alſo a half yearly report of depending cauſes; to be tranſmitted in abſtract only on the 1ſt July; but with a Perſian detail, on the 1ſt January of each year, and an explanation of the reaſons which may have prevented the deciſion of any cauſes included in a former half yearly report. Similar monthly and half yearly reports are required to be furniſhed by the provincial courts of appeal. And an abſtract of the whole, including the cauſes decided by, or depending before, the ſudder dewanny adawlut, is prepared by the regiſter of that court; and ſubmitted, with the court's remarks and orders upon the reports of the

Penalty for neglect of duty.

Book of daily proceedings to be kept by each court.

Monthly report of decided cauſes.

And half yearly report of depending cauſes.

* The book of daily proceedings for cauſes tried by the regiſters to the zillah and city courts, and for all orders paſſed or acts done by them, in their judicial capacity, is alſo, of courſe, to be kept and atteſted by the regiſter.

provincial, zillah and city courts, for the information of the Governor General in Council *.

Reserving for a subsidiary section the few legal provisions, in matters of civil contract and inheritance, which have been specifically made by the regulations, in addition to, or explanation of, the laws and established usages of the country; as well as the rules, not included in the present section, which are more remotely connected with the administration of civil justice; it remains only to observe, that all covenanted servants of the Company, employed in the judicial department, civil or criminal, are, in common with those employed in the collection of the public revenue, prohibited from "lending "money, directly or indirectly, to any proprietor or farmer "of land, or dependant talookdar, or under-farmer or ryot, "or their sureties; and all such loans as have been made in "opposition to the repeated prohibitions of government, or "which may be hereafter made, are declared not recover-"able in any court of judicature." They are also, in common with all Europeans, "of whatever nation or description" forbidden to "purchase, rent, or occupy, directly or indi-"rectly, any land out of the limits of the town of Calcutta "without the sanction of the Governor General in Council;" and all persons holding land, in opposition to this prohibition, are

R. XXXVIII, 1793
R. XLVIII, 1795.
R. XIX, 1803. Prohibition to Company's servants, employed in the judicial, or revenue, department, from lending money to landholders, farmers, undertenants and cultivators; or their sureties.

Also (in common with all Europeans) from purchasing, renting, or occupying land, out of Calcutta, without the sanction of Government.

* The provincial, zillah, and city courts have been furnished by the sudder dewanny adawlut, with forms for the monthly reports of decided causes, and half yearly reports of depending causes, required by the regulations; and were instructed (on the 25th July 1798) to explain the reason of more causes not having been determined, whenever the number decided on trial (viz. exclusive of nonsuits upon default, and adjustments by razeenamahs) either by the judges, or registers, may be less than ten; in fixing which limitation, the court observed "they had not considered the total number of decisions to be expected monthly; but had regard, "as well to the time occasionally occupied in the investigation of particular causes, as to other "accidental circumstances which may sometimes prevent a greater number of decisions; and "which the court are always ready to admit in explanation of even a less number; provided "such circumstances be stated for their information." The following statements of the number of causes decided on investigation, dismissed on default, or adjusted by the parties, in the several civil courts of Bengal, Bahar, Orissa, and Benares, during the year 1804, and of the number of original causes and appeals depending on the 1st January 1805, will afford a general and satisfactory view of the actual administration of civil justice in these provinces. The number of original suits and appeals, which were determined in the ceded provinces during the year 1804, is not immediately ascertainable; but a statement is subjoined, of the number depending on the 1st January 1805.

Statement

are declared "liable to be diſpoſſeſſed of the land at the diſ-"cretion of the Governor General in Council; nor ſhall they "be intitled to any indemnification for buildings which they "may have erected; or other account." Both of theſe reſtrictions were included in the judicial regulations paſſed on the 5th July 1781, and the revenue regulations paſſed on the

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Statement of ſuits, decided or diſmiſſed in the ſeveral zillah and city courts of Bengal, Bahar, Oriſſa, and Benares, during the year 1804, or adjuſted by the parties.

		Before the Judges.		
Decided or diſmiſſed	6940.	Adjuſted by the Parties	725.	Total 7665
		Before the Aſſistant Judges (of zillahs Behar, Hoogly, Tirhoot, and city of Patna.)		
Decided or diſmiſſed	879.	Adjuſted by the Parties	45.	Total 924
		Before the Registers.		
Decided or diſmiſſed	6433.	Adjuſted by the Parties	1347.	Total 7780
		Before the Head Native Commissioners.		
Decided or diſmiſſed	6387.	Adjuſted by the Parties	2439.	Total 8826
		Before the other Native Commissioners.		
Decided or diſmiſſed	95,208.	Adjuſted by the Parties	1,55,971.	Total 2,51,179
Total of cauſes decided, diſmiſſed, or adjuſted in the year 1804.				2,76,374

Appeals decided, diſmiſſed, or adjuſted, in the provincial courts of appeal, and in the ſudder dewanny adawlut, during the year 1804.

	Decided or diſmiſſed.	Adjuſted.	Total.
Benares provincial court,	61	0	61
Calcutta ditto,	223	4	227
Dacca ditto,	138	14	152
Moorſhedabad ditto,	189	4	193
Patna ditto,	115	7	122
	726	29	755
Sudder dewanny adawlut,	51	0	51
Total of appeals decided, diſmiſſed, or adjuſted in the year 1804.	777	29	806

Statement of ſuits depending in the zillah and city courts of Bengal, Bahar, Oriſſa, and Benares, on the 1ſt January 1805.

Before the judges,	12,748
Before the aſſiſtant judges,	936
Before the regiſters,	10,867
Before the head native commiſſioners,	6,558
Before the other native commiſſioners,	95,366
Total of cauſes depending in the zillah and city courts.	1,26,475

Appeals depending before the provincial courts of appeal, and ſudder dewanny adawlut, on the 1ſt January 1805.

Benares provincial court,	31	
Calcutta ditto,	328	
Dacca ditto,	541	
Moorſhedabad ditto,	44	
Patna ditto,	228	
	1172	
Court of ſudder dewanny adawlut,	52	
Total of appeals depending in the provincial courts and ſudder dewanny adawlut,		1224

Statement of original ſuits and appeals depending in the ceded provinces on the 1ſt January 1805.

In the zillah courts,	2,796	
In the provincial court,	11	
Total depending on the above date.		2807

8th

8th June 1787; as well as in the code enacted on the 1st May 1793.* The policy of the former rule, which reſtricts the judicial and revenue officers from being engaged in money tranſactions with perſons under their immediate authority, is obvious: and the object of it is ſtated, in the preamble to Regulation XXXVIII, 1793, "to guard againſt the abuſes, "that the powers, with which they were inveſted, would "have enabled them to practice, had they been permitted "to engage in ſuch tranſactions with individuals ſubject to "their official control." The latter proviſion is further ſtated to have been made "from a regard to the prejudices of the "natives; with a view to promote their eaſe and happineſs; "and to obviate the evils that would neceſſarily have reſulted "from allowing any perſons, not amenable to the provincial "courts of judicature, to purchaſe or rent eſtates, without re-"ſtriction or limitation."

Policy and objects of theſe reſtrictions.

To the ſyſtem thus eſtabliſhed in 1793, for adminiſtering civil juſtice in the Britiſh provinces of Bengal, Bahar, and Oriſſa; extended in 1795, to the province of Benares; and adopted in 1803, with the additions and amendments ſuggeſted by an experience of ten years, for the provinces ceded by the Nuwab Vizeer; as well as, more recently, for the territory ceded by the Peſhwa, by Doulut Rao Sendheeah, and by the Rajah of Berar; it is impoſſible to apply any

General remark on the ſyſtem of civil juſtice eſtabliſhed in 1793; and ſince extended to Benares, and the ceded and conquered provinces.

* By the 20th article of the judicial regulations paſſed on the 5th July 1781, and the ſame article of the regulations paſſed on the 27th June 1787, the courts of judicature were prohibited from adjudging the amount of any debt contracted by a landholder paying revenue to government without the ſanction of the committee or board of revenue, and a regiſtry of it in the canoongo's office; or although ſo regiſtered, if the debt were contracted with any European; or with any native officer employed in the collection of the public revenue. In the appeal of Rajah MOHUMMUD ZUMAN KHAN verſus Mr. R. GALE, decided by the ſudder dewanny adawlut in the month of October 1796, it was declared by the court, that the rule referred to, in the 20th article of the Regulations of 5th July 1781, and 27th June 1787, though repealed as far as reſpects the ſanction of the board of revenue by Section LXVII, Regulation VIII, 1793, (which enacts "that all actual proprietors of land, and dependant talookdars, are to be held to "have been at liberty from the 29th October 1790, to borrow money without the ſanction of "the board of revenue;") and virtually, as far as regards Europeans not employed in the adminiſtration of juſtice, or the collection of revenue, by Regulation XXXVIII, 1793, (which prohibits Europeans of theſe deſcriptions from lending money to landholders, and refers to other Europeans not prohibited) muſt be ſtill conſidered applicable to all debts contracted, and engagements entered into, whilſt it was in force; unleſs otherwiſe directed by any ſubſequent rule, as in the inſtance noticed, in which the retroſpective repeal of the reſtriction upon proprietors of land in borrowing money without the conſent of the board of revenue being expreſsly limited to the 23d October 1790, (the period of the permanent ſettlement of the land revenue) it muſt be conſidered in force to that date.

obſervation

obſervation more appropriate, or more juſt, than the proſpective remark of the Noble Marqueſs by whom it was founded, contained in the following extract from the preamble to Regulation III, 1793. "A ſyſtem for the adminiſtration of the laws and regulations, ſo conſtituted, will contain "an active principle, which allowing for the various characters and diſpoſitions of thoſe who may be employed in "the immediate conduct of it, muſt continually operate to the "important ends of compelling men to be juſt in their dealings with each other; bringing into action that ſpirit of induſtry which is implanted in mankind: and which exerts "itſelf in proportion as individuals are certain of enjoying "the fruits of it; diſpenſing proſperity and happineſs to the "great body of the people; and increaſing the power of the "ſtate, which muſt be proportionate to the collective wealth "that, by good government, it may enable its ſubjects to "acquire." That the expectation thus expreſſed, of the operative and beneficial tendency of the ſyſtem introduced in 1793, has been amply realized, can need no other teſtimony than what has been quoted, in the introduction to this analyſis, from the late collegiate diſcourſe of His Excellency the preſent Governor General; who has augmented the benefits of it, as well by ſupplying unavoidable deficiencies in the original regulations, as by enlarging the ſphere of their efficiency over the wide, fertile, and populous acceſſions of territory, obtained for the Eaſt India Company and Crown of Great Britain, by wiſdom, energy and valour, under His Lordſhip's vigorous and eventful adminiſtration*.

The expectation of Marqueſs CORNWALLIS fully realized.

Benefits of the ſyſtem augmented by Marqueſs WELLESLEY.

* In the marginal notes to the ſubſequent parts of this work B. R. will diſtinguiſh the regulations *ſpecially* enacted for the province of *Benares*; and C. R. the regulations enacted for the *ceded* or *conquered* provinces *only*. The want of this diſtinction in the two preceding ſections may be partly ſupplied by obſerving, that all the Regulations of 1795, from I, to XXXIV, and from XLI to LI, as well as LIV and LX, relate excluſively to Benares, and that the regulations of 1803, from I to XLVII, as well as LI and LII, had excluſive reference to the provinces ceded by the Nuwab Vizeer, till they were extended to the territory ceded by the Peſhwa and Doulut Rao Sendheeah. In binding up the regulations, it is convenient to let theſe ſpecial rules, for Benares and the ceded provinces, form two ſupplementary volumes; by which means they are kept diſtinct from the general code.

SECTION

SECTION III.

SUBJECTS CONNECTED WITH CIVIL JUSTICE.

General principles of laws of intereſt and uſury.

TO promote the circulation of money, and encourage commerce, it has, in almoſt all countries, been deemed expedient to ſanction by law the receipt of a juſt conſideration for the uſe of money, proportioned to it's actual value or price; which depends upon the quantity of current ſpecie and the general demand for it; and to the riſk incurred in lending it; ſubject to penalties for exceſſive and illegal intereſt, or, as commonly denominated, uſury.* But the Mahomedan law, which in this and other inſtances is borrowed from the Moſaic, forbids the taking of intereſt for the uſe of money, upon loans from one Muſulman to another, and has not regulated the rate of it, when allowed to be taken from a hoſtile infidel.† The Hindoo law permits intereſt to be taken (with ſome exceptions) and has preſcribed the rates to be received with, or without, a pledge, or ſurety. But the legal rates vary according to the caſt, or claſs, of the borrower; as well as under other circumſtances of time and place; and a conſiderable difference of conſtruction has been given, by the

Mahomedan law reſpecting intereſt.

Hindoo law.

* Vide BLACKSTONE, Vol. II, page 454. He remarks "that the exorbitance or moderation "of intereſt for money lent depends upon two circumſtances; the inconvenience of parting with "it for the preſent, and the hazard of loſing it entirely. The inconvenience to individual "lenders can never be eſtimated by laws; the rate therefore of general intereſt muſt depend "upon the uſual or general inconvenience. This reſults entirely from the quantity of ſpecie "or current money in the kingdom." But in this caſe, it ſeems to be the general demand for money, by thoſe who want it; rather than the inconvenience of parting with it, to thoſe who poſſeſs it; which regulates, or ought to regulate, the rate of legal intereſt. It has been queſtioned indeed whether any limitation of intereſt ſhould, in policy, be fixed by law; but the laws of England have made the lender at illegal intereſt liable to a penalty of treble the amount of the ſum lent; beſides declaring void all uſurious bonds, contracts, and aſſurances; and their commentator, diſtinguiſhing "between a moderate and exorbitant profit; to the "former of which we uſually give the name of intereſt; to the latter the truly odious ap-"pellation of uſury," obſerves that "the former is n ceſſary in every civil ſtate, if it were "but to exclude the latter, which ought never to be tolerated in any well regulated ſociety."

† See HAMILTON's tranſlation of the Hedaya, Vol. II, chapters on "*Ribba* or uſury" and "*ſirf* ſales."

commentators

commentators upon the Hindoo law of contracts, to the texts which reſpect the limitation of intereſt, and the invalidity, or immorality only, of uſurious loans and engagements.* Moreover, the Hindoo legiſlators have expreſſly ſanctioned, and the Muſſulman governments of India appear to have tolerated, directly or indirectly, the *cuſtomary intereſt* of the country; which, in the plan for the adminiſtration of juſtice propoſed by the committee of circuit in the year 1772, is ſtated to "have amounted to the moſt exorbitant uſury" It was therefore judged neceſſary to preſcribe a fixed and general rule for the limitation of intereſt, to be received and paid, in all caſes of loan and debt; and the eighteenth article of the plan abovementioned eſtabliſhed the following rates, "as well for paſt debts, as on future loans of money: "viz. on ſums not exceeding one hundred rupees principal, "an intereſt of three rupees two annas per cent per menſem, "or half an anna in the rupee: on ſums above one hundred "rupees principal, an intereſt of two rupees per cent per "menſem. The principal and intereſt to be diſcharged ac- "cording to the condition of the bond: and all compound "intereſt, ariſing from intermediate adjuſtments of accounts, "to be deemed unlawful and prohibited." It was further provided (by the 18th and 19th articles) that "when a debt "is ſued for upon a bond, which ſhall be found to ſpecify "a higher intereſt than the eſtabliſhed rates, the intereſt ſhall "be wholly forfeited to the debtor, and the principal only "be recoverable; and that all attempts to elude this law, by "deductions from the original loan under whatever deno- "mination, ſhall be puniſhed by a forfeiture of one moiety "of the amount of the bond to government and the other

Cuſtom of India.

Neceſſity of a general rule for the limitation of intereſt.

Rates eſtabliſhed in 1772.

And proviſions then made for forfeiture of illegal intereſt.

As well as of the principal in caſes of evaſive deduction.

* The proviſions of the Hindoo law on loans, intereſt, and pledges, are fully ſtated in the three firſt chapters of Mr. COLEBROOKE's tranſlation of the digeſt on contracts and ſucceſſions, compiled under the ſuperintendence of the late Sir W. JONES, and commented upon by JAGANNA'T'HA TERCAPANCHA'NANA, an eminent Pundit, who is ſtill living, at the advanced age of one hundred and eight years; and reſident at *Tirveny*, about thirty miles from Calcutta; where, ſurrounded by four generations of his deſcendants, in number nearly an hundred, he continues to give daily lectures to his pupils upon the principles of law and philoſophy.

"half

" half to the debtor." Alſo that " all bonds ſhall be execut- " ed in the preſence of two witneſſes." Theſe proviſions were continued in the 22d and 23d articles of the judicial regulations paſſed on the 28th March 1780, with the following qualifications. " In caſes of future loans, no higher intereſt to " be allowed than two per cent per menſem, or twenty four " per cent per annum, where the principal ſhall be under one " hundred rupees: and one per cent per menſem, or twelve " per cent per annum, where the principal ſhall exceed one " hundred rupees. It ſhall be further in the diſcretion of " the ſuperintendent of the dewanny adawlut, in caſes of paſt " loans, on a review of the circumſtances of the debt, and " condition of the debtor, to ſettle the payment of the debt " according to a known and eſtabliſhed cuſtom of the coun- " try; namely, where the intereſt has accumulated ſo as to " exceed the principal, to reduce it to one half of the prin- " cipal, or where the intereſt has exceeded one half of the " principal to reduce it to a quarter. That all bonds ſhall " in future be executed in the preſence of two ſubſcribing " witneſſes; this is not however to apply to bills of exchange, " receipts, or notes of hand, in which the cuſtom of the coun- " try is to be referred to and abided by." Proviſions to the ſame effect, with a modification to admit of a judgment upon bonds, though not proved by two witneſſes, on proof of payment of the amount, or the receipt of ſome other valuable conſideration, were included in the 21ſt, 22d, and 25th articles of the regulations of the 5th July 1781; and in the 15th article of the printed ſupplement thereto, it is ſtated, that " the judge " of the moſuſſil dewanny adawlut of Patna having repre- " ſented to the Governor General and Council, that there " were numerous complaints brought before him for debts " due on mortgage bonds; by enquiry into which, the re- " ceipts from the ſubject mortgaged often appeared to have " more than doubled the original loan; he conſidered theſe " as caſes of ſuch hardſhip, as to requeſt the honorable board's inſtructions

Alſo for atteſtation of bonds.

Qualification, and further proviſions, in regulations of 28th March, 1780.

Similar proviſions, with modification reſpecting bonds, in regulations of 5th July, 1781.

Supplementary article, reſpecting mortgages 13th June 1783.

" inſtructions how to proceed relative to them, as ſuch prac-
" tices, however conformable to the cuſtom of the Bahar
" province, appeared to him in the light of a palpable evaſion
" of the 21ſt article of the regulations; wherefore he propoſed
" that only the ſame intereſt ſhould be allowed on mortgage
" bonds, that is, by the abovementioned article of the code,
" allowed on other bonds, and that the mortgaged property
" ſhould be redeemed whenever the original, with the ſimple
" intereſt ariſing thereon, ſhould be or have been diſcharged
" by the mortgagee; which propoſitions having, on the 13th
" June 1783, met with the honorable board's approbation, the
" judge was directed to act accordingly; and this is therefore
" to be conſidered as a general rule throughout the provinces."

Section XXI, of regulations paſſed 27th June 1787, annulled 19th Auguſt 1789.

It is unneceſſary to ſpecify Section XXI, of the reviſed regulations for the civil courts, paſſed on the 27th June 1787; as it was annulled, and the 21ſt article of the former regulations of 5th July 1781 reſtored, on the 19th Auguſt 1789.

Alterations made in October 1790, ſince more fully provided for.

It is alſo immaterial to notice the alterations made in the former rules, reſpecting intereſt and mortgages, by the reſolutions of government under dates the 28th, 29th, 30th, and 31ſt October 1790; as they have been ſince more fully provided for.

Uniform rate of intereſt fixed at 12 per cent from 1ſt January 1793.

But it is requiſite to add, as preliminary to the exiſting rules, that by a regulation paſſed on the 23d November 1792, it was enacted that, from the firſt day of January 1793, the limitation of intereſt, upon all debts or other cauſes of action ariſing ſubſequently to that date, ſhould be fixed at the rate of twelve per cent per annum, whether the principal amount be more or leſs than one hundred ſicca rupees.*

Foregoing recital preliminary to Regulation XLV, 1793.

THE foregoing obſervations and recital have been ſtated for the purpoſe of explaining the proviſions contained in Regula-

* Twelve per cent per annum is alſo the limitation of intereſt, to Britiſh ſubjects in the Eaſt Indies, fixed by the Statute 13, G. III, Cap. LXIII, § XXX, from the 1ſt Auguſt, 1774, under penalty of forfeiting treble value of any loan at higher intereſt, direct or indirect, with coſts, beſides making void all bonds, contracts and aſſurances, executed after the above date, for the principal.

tion

tion XV, 1793, for fixing the rates of intereſt (to be adjudged) on paſt and future loans, in Bengal, Bahar, and Oriſſa; the ſeveral ſections of which from II to XII, in conſideration of their importance and penal operation, are ſubjoined *verbatim*.

Declaring rates of intereſt to be adjudged on paſt and future loans, in Bengal, Bahar, and Oriſſa.

II. "If the cauſe of action ſhall have ariſen before the twenty-eighth day of March, one thouſand ſeven hundred and eighty, the courts of civil judicature are not to decree higher or lower rates of intereſt than the following: On ſums not exceeding one hundred ſicca rupees, three rupees and two annas per cent per menſem, or thirty-ſeven rupees and eight annas per cent per annum; on ſums exceeding one hundred ſicca rupees, two per cent per menſem, or twenty-four per cent per annum."

Section II, of that regulation. Rates of intereſt before 28th March 1780.

III. "If the cauſe of action ſhall have ariſen at any period between the twenty-eighth day of March, one thouſand ſeven hundred and eighty, and the firſt day of January, one thouſand ſeven hundred and ninety three, no higher or lower rates of intereſt than the following are to be decreed: On ſums not exceeding one hundred ſicca rupees, two per cent per menſem, or twenty-four per cent per annum; on ſums exceeding one hundred ſicca rupees, one per cent per menſem, or twelve per cent per annum."

Section III. Rates of intereſt from 28th March 1780 to 1ſt January 1793.

IV. "If the cauſe of action ſhall have ariſen on or after the firſt day of January, one thouſand ſeven hundred and ninety three, the courts are not to decree any intereſt, on any ſum whatever, above the rate of twelve per cent per annum."

Section IV. Rate of intereſt from 1ſt January 1793.

V. "If in any of the caſes ſpecified in Sections II, III, and IV, a lower rate of intereſt, than any of the rates therein authorized to be awarded, ſhall have been ſtipulated between the parties, no higher rate of intereſt than the rate ſo ſtipulated is to be decreed."

Section V. Proviſion, if leſs than the authorized rates be ſtipulated.

VI.

Section VI. What judgment to be given, when accumulated intereſt may exceed the principal.

VI. "If the intereſt on any debt, calculating according to the rates allowed by this regulation, ſhall have accumulated ſo as to exceed the principal, the courts are not, in any caſe whatever (excepting the caſes ſpecified in Section XII,) to decree a greater ſum for intereſt than the amount of ſuch principal. *

Section VII. In what caſes only, compound intereſt to be allowed.

VII. "The courts are not to decree any compound intereſt, ariſing from intermediate adjuſtments of accounts. This rule however is not to extend to caſes in which accounts between the parties ſhall have been adjuſted, and the former bonds or agreements cancelled, and new bonds or agreements taken for the aggregate amount of the principal and the legal intereſt remaining due upon the adjuſtment, conſolidated into principal."

Section VIII. Intereſt forfeited, if the ſpecified rate be illegal.

VIII. "The courts are not to decree any intereſt whatever, in any caſe where the bond or inſtrument given for the ſecurity and evidence of the debt ſhall have been granted on or ſubſequent to the twenty-eighth day of March, one thouſand ſeven hundred and eighty, and ſhall ſpecify a higher rate of intereſt than is authorized by this regulation to have been given and received ſubſequent to that date."

Section IX. Forfeiture of principal and intereſt in caſes of evaſive deduction, or other device.

IX. "Nor to decree any intereſt whatſoever in favor of the plaintiff, in any caſe where the cauſe of action ſhall have ariſen on or ſubſequent to the twenty-eighth day of March, one thouſand ſeven hundred and eighty, where a greater intereſt, than is authorized by this regulation, ſhall have been received, or ſtipulated to be received, if it be proved that any attempt has been made to elude the rules preſcribed in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment, but for the diſmiſſion of the ſuit, with coſts to be paid by the plaintiff."

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* This proviſion has no reference to the intereſt upon ſums adjudged, which is authorized and directed by Section III, Regulation XIII, 1796, when a judgment appealed from may be confirmed.

X. "In caſes of mortgages of real property, executed prior to the twenty-eighth day of March, one thouſand ſeven hundred and eighty, in which the mortgagee may have had the uſufruct of the mortgaged property, whether he ſhall have held it in his own poſſeſſion or not, the uſufruct is to be allowed to the mortgagee in lieu of intereſt, agreeably to the former cuſtom of the country, (provided it ſhall have been ſo ſtipulated between the parties) until the abovementioned date; ſubſequent to which the ſame intereſt to be allowed on ſuch mortgage bonds, and alſo on all bonds for the mortgage of real property which have been entered into on or ſince that date, or that may be hereafter executed, as is allowed on other bonds, which have been or may be granted on or poſterior to ſuch date, and no more; and all ſuch mortgages are to be conſidered as virtually and in effect cancelled and redeemed, whenever the principal ſum, with the ſimple intereſt due upon it, ſhall have been realized from the uſufruct of the mortgaged property, ſubſequent to the twenty-eighth day of march, one thouſand ſeven hundred and eighty, or otherwiſe liquidated by the mortgager."

Section X. Uſufruct in lieu of intereſt, allowed in mortgages prior to 28th March, 1780.

But mortgage bonds, ſubſequent to that date, ſubject to the ſame limitations of intereſt, as other bonds.

And mortgage to be conſidered redeemed, on receipt of the principal and ſimple intereſt from the uſufruct.

XI. "For the adjuſtment of accounts in the caſes of mortgages ſpecified in Section X, where the mortgagee ſhall have had the uſufruct of the mortgaged property, the mortgagee is to be required to deliver in the accounts of his groſs receipts from the property mortgaged, and alſo of his expenditures for the management or preſervation of it. The mortgagee is to ſwear, or (if he be of the deſcription of perſons whom the courts are empowered to exempt from taking oaths) to ſubſcribe a ſolemn declaration, that the accounts which he may deliver in are true and authentic. The mortgager is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce reſpecting them, the court is to adjuſt the account."

Section XI. Accounts to be delivered by the mortgagee, and adjuſtment to be made by the court, in the caſes laſt mentioned.

XII.

Section XII. Exception of reſpondentia loans, and policies of inſurance, from preceding rules.

XII. "THE rules contained in the preceding ſections are not to be conſidered to extend to reſpondentia loans, or policies of inſurance; the intereſt on which is to be regulated by the terms of the deeds, and the laws and uſages which prevail reſpecting ſuch tranſactions."

R. III, 1793, § XV. Evidence to be required, in giving judgment upon bonds, executed after 28th March 1780.

BY Section XV, Regulation III, 1793, the proviſion before in force, reſpecting the evidence required for the proof of bond debts, was continued in the following terms. "The zillah and city courts are prohibited decreeing the "payment or ſatisfaction of any ſum due on a tamaſſook or "bond, which may have been entered into after the 28th "March 1780, unleſs the bond ſhall be proved to have been "executed in the preſence of two credible witneſſes, or the "payment of the ſum demanded on the bond, or ſome other "valuable conſideration for it having been received, ſhall be "proved to the ſatisfaction of the court. But the reſtriction "contained in this ſection is not to extend to any bills of "exchange, receipts, or notes of hand; in the determination "on which the cuſtom of the country is to be abided by." This rule was extended to the province of Benares, with reſpect to bonds executed after the 1ſt July 1795, by Section IX, Regulation VII, 1795; with an additional reſtriction that it ſhould not be applied to "the dealings and money tranſac-"tions amongſt mahajuns and ſhroffs; in which the eſtabliſh-"ed cuſtoms obſerved and enforced amongſt them are to be "adhered to by the courts in their inquiries and deciſions." The ſpirit of this proviſion muſt alſo be deemed applicable to all money tranſactions in the province of Benares, for which no ſpecific rule has been preſcribed; and as Regulation XV, 1793, has not yet been extended to that province, the penalties for uſury enacted by it can at preſent be enforced by the Benares courts of juſtice, as far only as they may be conformable to the known law and uſage of that province. Regulation I, 1798, framed "to prevent fraud and injuſtice "in

But reſtriction not to include bills of exchange, receipts, or notes of hand.

R. R. VII, 1795, § IX. Above rule, concerning bonds, extended to Benares, with a further exception of the money tranſactions of bankers.

Eſtabliſhed cuſtom applicable to all money tranſactions in Benares, for which no ſpecific rule has been preſcribed. R. XV, 1793, not extended to that province. But legal intereſt fixed at 12 per cent, by extenſion of R. I, 1798.

" in conditional ſales of land under deeds of Bye-bil-wuffa " or other deeds of the ſame nature," is however expreſsly declared to extend to Benares, as well as to the provinces of Bengal, Bahar, and Oriſſa; and from the terms of it, hereafter cited, muſt be conſidered to have eſtabliſhed, ſince it's publication in the former province, the general limitation of intereſt, at " the legal rate of twelve per cent per annum."

Preamble to R. I, 1798. Prevalence of conditional ſales of land, upon loans, under deeds of *Bye-bil-wuffa*, or *Kut Cubaleh*, and neceſſity of proviſions reſpecting them.

UNDER the prohibition of the Mahomedan law, againſt the taking of intereſt upon money lent; as well as for the greater ſecurity of money lenders, whether Hindoo or Mahomedan, by having a pledge equivalent, or ſuperior in value, to the ſum advanced by them; it has long been a prevalent practice to borrow money on the mortgage, and conditional ſale, of landed property, under a ſtipulation, that if the ſum borrowed be not repaid (with or without intereſt) by a fixed period, the ſale ſhall become abſolute. This ſpecies of transfer is uſually denominated *Bye-bil-wuffa* (conditional ſale, or ſale to be completed) in the province of Bahar, where it is moſt frequent; and is alſo common in Bengal, under an inſtrument termed *Kut Cubaleh*. The promulgation of Regulation XV, 1793, increaſed the prevalence of this tranſaction, with a view to avoid the limitations of intereſt; and inſtances occurred, in which perſons lending money on Bye-bil-wuffa, in order to render the ſale abſolute, denied the tender, or evaded receiving payment, of the money due to them, within the period limited for the diſcharge of it. In ſuch caſes the proof of the tender falls upon the borrower; and if he fail, from want of legal evidence, he is liable to loſe his eſtate. It was therefore neceſſary, for the ſecurity of the borrower in ſuch tranſactions, that he ſhould have the means of eſtabliſhing before the courts of judicature his having tendered, or being ready to pay, within the ſtipulated period, the amount due from him to the lender; and the following rules were enacted by the regulation abovementioned for this purpoſe.

II.

Reg. I, 1798, § II. Borrower in ſuch caſes how to proceed for the redemption of his lands within the ſtipulated period.

II. "In all inſtances of the loan of money on Bye-bil-wuffa, or on the conditional ſale of landed property, however denominated, the borrower, who may be deſirous to redeem his land by the payment of the money lent upon it, with any intereſt due thereon, within the ſtipulated period, is at liberty, on or before the date ſtipulated, either to tender and pay to the lender the amount due to him; taking ſuch precautions as he may think neceſſary to eſtabliſh ſuch tender and payment, if evaded or denied; or, without any tender to the lender, to depoſit the amount due to him, on or before the ſtipulated date, in the dewanny adawlut of the city or zillah in which the land may be ſituated; and the judge receiving the ſame ſhall furniſh the party with a written receipt for the amount, ſpecifying on what date, and for what purpoſe, ſuch depoſit may have been made. He ſhall alſo, at the ſame time, cauſe a written notice of ſuch depoſit to be delivered to the lender; and on the application of the latter, and his ſurrender of the conditional bill of ſale, or ſhewing ſatisfactory cauſe why it cannot be ſurrendered, ſhall pay him the amount depoſited; and take his acknowledgement, to remain among the records of the court. That there may be no doubt to what amount the depoſit in queſtion is to be made, it is required to be as follows. When the lender has not obtained poſſeſſion of the lands, the depoſit is to be the principal ſum lent, with the ſtipulated intereſt thereon, not exceeding the legal rate of twelve per cent per annum; or if intereſt be payable, and no rate has been ſtipulated, with intereſt at the eſtabliſhed rate of twelve per cent; but if the lender has held poſſeſſion of the land, the principal ſum borrowed only need be depoſited, leaving the intereſt to be ſettled on an adjuſtment of the lender's receipts and diſburſements, during the period he has been in poſſeſſion. In either caſe, a depoſit made as above required, ſhall be conſidered to preſerve to the borrower his full right of redemption; and if the land be in the poſſeſſion of the lender, ſhall intitle him to demand the

immediate

immediate recovery thereof, ſubject to the adjuſtment of accounts ſpecified in the following ſection. Provided however, that if the borrower, in any caſe, ſhall depoſit a leſs ſum than above required, alleging that the ſum ſo depoſited is the total amount due to the lender, for principal and intereſt, after deducting the proceeds of the lands in his poſſeſſion, or otherwiſe, ſuch depoſit ſhall be received; and notice given to the lender as above directed; and if the amount ſo depoſited be admitted by the lender, or be eſtabliſhed on inveſtigation, to be the total amount due to him, the right of redemption ſhall be conſidered to have been fully preſerved to the borrower; who will not however, in ſuch caſes, be intitled to the recovery of his lands, until it be admitted, or eſtabliſhed, that he has paid the full amount due from him."

Section III. The lender to account for the proceeds of the eſtate whilſt in his poſſeſſion, on the principles preſcribed in R. XV, 1793, as far as applicable.

III. "In all inſtances wherein the lender on a Bye-bil-wufla, or ſimilar conditional ſale, may have been put in poſſeſſion of the land, and an adjuſtment of accounts may conſequently become neceſſary between him and the borrower, the lender is to account to the borrower for the proceeds of the eſtate whilſt in his poſſeſſion, on the principles preſcribed, with regard to mortgages and intereſt, in Regulation XV, 1793, as far as the ſame may be applicable to the nature of the caſe. But ſuch part of Section X, of the above regulation, as directs that the mortgages therein referred to are to be conſidered as cancelled and redeemed, whenever the principal ſum, with the ſimple intereſt due upon it, ſhall have been realized from the uſufruct of the mortgaged property, or otherwiſe liquidated by the mortgagee, being inapplicable to the conditional ſales referred to in this regulation, it is declared not to apply thereto."

But redemption from the uſufruct, provided for by Section X of that regulation, inapplicable to the conditional ſales here referred to.

§ IV. Teeps, or notes of bankers, not to be conſidered a legal tender; unleſs accepted

IV. "A *teep*, for the repayment of money lent on the conditional ſales referred to in this regulation, ſhall not be conſidered a legal tender, unleſs accepted as ſuch by the lender;

as ſuch by the lender.

lender; the proof of which acceptance ſhall be the lender's giving up the bill of ſale, or giving a written acknowledgement that he has received back the money lent by him."

§ V. Theſe proviſions not meant to alter any terms of contract ſettled between the parties; illegal intereſt excepted.

V. "NOTHING in this regulation being intended to alter the terms of contract ſettled between the parties, in the tranſactions to which it refers, (illegal intereſt excepted) the ſeveral proviſions in it are to be conſtrued accordingly; and any queſtion of right between the parties is to be regularly brought before, and determined by, the courts of civil juſtice."

C. R. XXXIV, 1803. Rules ſtated, relative to mortgages, conditional ſales, limitations of intereſt, and uſury, re-enacted for ceded provinces, with qualifications.

THE whole of the foregoing proviſions, relative to mortgages and conditional ſales of land, as well as the limitations of intereſt and penalties for uſury, contained in Regulation XV, 1793, have been re-enacted for the ceded provinces, by Regulation XXXIV, 1803; with the under mentioned qualifications. If the cauſe of action ſhall have ariſen before the 10th day of November 1801, the courts of judicature are not to decree higher rates of intereſt than the following, viz. on ſums not exceeding one hundred ſicca rupees, two rupees eight annas per cent per menſem, or thirty per cent per annum; on ſums exceeding one hundred ſicca rupees, two per cent per menſum, or twenty four per cent per annum. If the cauſe of action ſhall have ariſen on or ſubſequent to the 10th November 1801, the courts are not to decree intereſt on any ſum whatever, above the rate of twelve per cent per annum. The rule againſt any judgment for intereſt, when the bond or other inſtrument ſhall ſpecify more than the authorized rate, is reſtricted to inſtruments granted on, or ſubſequent to, the 1ſt day of January 1804; and the further rule for diſmiſſing the claim to principal as well as intereſt, with coſts, on proof of any attempt made to elude the preſcribed rates of intereſt, by a deduction from the loan or other device, is alſo confined to caſes in which the cauſe of action ſhall have ariſen on or ſubſequent

Rates of intereſt, before 10th November 1801.

Limitation of intereſt to 12 per cent after that date.

Rules of forfeiture to have operation from 1ſt Jaunary 1804.

ſubſequent to, the above date. In conſideration of the former cuſtom of the country, which allowed the uſufruct of lands to be received in lieu of intereſt, proviſion is likewiſe made for the continuance of ſuch cuſtom to the 10th November 1801, (the time of ceſſion to the Company) after which, as in the other provinces, all pledges of land, or other real property, for the payment of money, which may not have been mortgaged with an eventual condition of ſale, under deeds of Bye-bil-wuffa, or any ſimilar denomination, are to be conſidered as virtually cancelled and redeemed, whenever the principal ſum, with the ſimple intereſt due upon it, ſhall have been realized from the uſufruct*." It may be proper to add that the rule of evidence which has been noticed, reſpecting bonds, does not appear to have been enacted for the ceded provinces. But the omiſſion cannot be of conſequence under the general proviſion, that in caſes for which no ſpecific rules may exiſt, the judges ſhall act according to juſtice, equity, and good conſcience†.

Uſufruct allowed to mortgagees till the 10th November 1801.

All pledges ſince that date, without a condition of ſale, redeemable from the uſufruct, as in other provinces.

THE

* The diſtinction between a *vivum vadium*, or living pledge, and *mortuum vadium*, dead pledge or mortgage, ſtated in the ſecond volume of BLACKSTONE's commentaries, Book II, Chapter X, is conſequently applicable to all pledges of land without a condition of ſale; in oppoſition to thoſe which are mortgage with ſuch condition. But the *equity of redemption*, allowed by the Engliſh courts of equity, "though a mortgagee be forfeited, and the eſtate "abſolutely veſted in the mortgagee by the common law, if the eſtate be of greater value "than the ſum lent thereon," whereby the mortgager is permitted, "at any reaſonable time, "to recal or redeem his eſtate, paying to the mortgagee his principal, intereſt, and expenſes," has not yet been extended to Indian landholders, who may have mortgaged and conditionally ſold their lands, under deeds of Bye-bil-wuffa, Kut-Cubaleh, or other deſignation. The ſtated conditions of ſuch deeds, and the eſtabliſhed practice of the country, in conſtruing them, upon failure, to convey an abſolute ſale to the mortgagee, have probably operated againſt the introduction of this "reaſonable advantage allowed to mortgagers" in England; but, if accompanied with the ſame reſtrictions (whereby "the mortgagee may either compel the ſale "of the eſtate in order to get the whole of his money immediately; or call upon the mortgager "to redeem his eſtate preſently, and in default thereof, to be for ever foreclоſed from redeem-"ing it;") a ſimilar proſpective means of equitable redemption, within a limited period, would not perhaps be unjuſt towards the lenders of money upon mortgages in India; and conſidering the improvident diſpoſition and habits of many deſcriptions of borrowers, might be perfectly juſt and expedient, for the very reaſon given for it by BLACKSTONE; who obſerves, that "other-"wiſe in ſtrictneſs of law, an eſtate worth one thouſand might be forfeited for non-payment "of one hundred pounds, or a leſs ſum."

† By a regulation lately paſſed and numbered VIII, 1805, the rule referred to has been extended to the ceded and conquered provinces, together with ſuch part of Regulation

R. XI, 1793. R. R. XLIV, 1795. R. X, 1800. Hindoo and Mahomedan laws of inheritance.

THE Hindoo and Mahomedan laws of inheritance ſanction and preſcribe a diviſion of patrimonial property amongſt ſons and other legal heirs, when they may require a partition, in preference to keeping the eſtate, for their common benefit, under the management of the elder brother, or other principal repreſentative of the family*. But a cuſtom, the reverſe of that of gavelkind in England, was eſtabliſhed in the provinces of Bengal, Bahar, and Oriſſa, before their ſubjection to Britiſh authority; whereby ſome of the moſt extenſive zemindaries, or land tenures in chief, on the death of the poſſeſſor, devolved entire to his eldeſt ſon, or other neareſt of kin, to the excluſion of the younger ſons, and other legal heirs, who were intitled to a ſuitable maintenance only. This cuſtom may have originated in the indiviſible nature of the Hindoo principalities, antecedent to the Moſulman conqueſt; or in conſiderations of policy and convenience, conſequent to that conqueſt; ſuch as introduced the impartible feudal tenures in Europe, and their deſcent to the eldeſt ſon only†. The reaſons for it, whatever they might have been in former times, had however ceaſed to operate; eſpecially under the declaration of the proprietary rights of zemindars, and other landholders, made by the proclamation contained in Regulation I, 1793; and the limitation of the public aſſeſſment upon lands, declared by the ſame proclamation to be fixed in perpetuity. A continuance of the uſage in queſtion was alſo deemed unfavorable to the general im-

Cuſtom in deviation therefrom; whereby particular eſtates were kept undivided.

Origin of this cuſtom.

Reaſons for diſcontinuance of it.

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lation XLIX, 1803, as had not been previouſly included in the regulations for thoſe provinces. The limitation of cauſes referable to the zillah regiſters, and of appeals from the deciſions of the zillah judges, is conſequently now the ſame throughout the whole of the territories under the preſidency of Fort William. The zillah of Paniput, compriſing the city of Dehli and its vicinity on the right bank of the Jumna, is however excepted, by Regulation VIII, 1805, from the operation of all regulations which may not be expreſsly declared to extend to it, upon an obvious principle of policy and conſideration towards the unfortunate repreſentative of the royal houſe of TYMOOR.

* For the Hindoo rules of ſucceſſion, conſult the inſtitutes of MENU tranſlated by Sir. W. JONES, and the 3d and 4th Volumes of the digeſt of Hindoo law already mentioned. The Mahomedan law of inheritance is ſtated and explained in the tranſlation of *Al Sirájiyyah*, and its commentary, by Sir. W. JONES.

† Vide BLACKSTONE, Vol. II, page 215.

provement of landed property "from the proprietors of "theſe large eſtates not having the means, or being unable "to beſtow the attention, requiſite for bringing into cultiva- "tion the extenſive tracts of waſte land compriſed in them." It was therefore enacted by Regulation XI, 1793, that, after the 1ſt July 1794, "if any zemindar, independent talookdar, "or other actual proprietor of land, ſhall die without a will, "or without having declared by a writing, or verbally, to "whom and in what manner his or her landed property is "to devolve, after his or her demiſe, and ſhall leave two "or more heirs, who by the Mahomedan or Hindoo law "(according as the parties may be of the former or latter "perſuaſion) may be reſpectively intitled to ſucceed to a "portion of the landed property of the deceaſed, ſuch perſons "ſhall ſucceed to the ſhares to which they may be ſo intitled.

Proviſion for ſucceſſion of all the legal heirs from 1ſt July 1794.

PROVISION was at the ſame time made, by the abovemen- tioned regulation, for allowing two or more perſons, ſuc- ceeding to an eſtate, either to hold it joint and undivided, under a common manager; or to obtain a diviſion and ſe- parate poſſeſſion of their reſpective ſhares, under the rules preſcribed for the diviſion of eſtates, paying revenue to government, in Regulation XXV, 1793. It was further pro- vided, that nothing contained in Regulation XI, 1793, ſhould be conſtrued to intitle any perſon to the ſhare of an eſtate held entire by any individual, or that might devolve entire to any individual prior to the 1ſt July 1794, under the cuſtom for the future abolition of which that regulation was enacted. "Nor "to prohibit any actual proprietor of land bequeathing or tranſ- "ferring by will, or by a declaration in writing, or verbally, "either prior or ſubſequent to the 1ſt July, 1794, his or her "landed eſtate entire to his or her eldeſt ſon, or next heir, or o- "ther ſon or heir, in excluſion of all other ſons or heirs, or to "any perſon or perſons, or to two or more of his or her heirs, "in excluſion of all other perſons or heirs, in the proportions, "and

Further proviſion for joint tenancy, or diviſion of eſtates.

Reſtriction.

Not meant to prohibit any legal bequeſts in favor of one or more perſons.

" and to be held in the manner, which ſuch proprietor may " think proper; provided that the bequeſt or transfer be not " repugnant to any regulations that have been or may be paſ- " ſed by the Governor General in Council, nor contrary to " the Hindoo or Mahomedan law; and that the bequeſt, or " transfer, whether made by a will, or other writing, or verbal- " ly, be authenticated by, or made before, ſuch witneſſes, and " in ſuch manner, as thoſe laws and regulations reſpectively " do or may require."

Jungul mehals of Midnapore, and other diſtricts, excepted from preceding rules.

It having been ſince found that the ſucceſſion to landed eſtates, ſituated on the hilly and woody frontier of Midnapore, and other diſtricts (known under the denomination of jungul mehals *) has, for a long period, invariably devolved to a ſingle heir; and this cuſtom appearing to be founded in circumſtances of local convenience, which ſtill exiſt; it is enacted by Regulation X, 1800, that " Regulation XI, 1793, ſhall not be con- " ſidered to ſuperſede or affect any eſtabliſhed uſage, which " may have obtained in the jungul mehals of Midnapore and " other diſtricts, by which the ſucceſſion to landed eſtates, the " proprietor of which may die inteſtate, has hitherto been " conſidered to devolve to a ſingle heir, to the excluſion of " the other heirs of the deceaſed. In the mehals in queſtion " the local cuſtom of the country ſhall be continued in full " force as heretofore; and the courts of juſtice be guided by it " in the deciſion of all claims which may come before them " to the inheritance of landed property ſituated in thoſe me- " hals."

And local cuſtom to be continued in theſe mehals.

Spirit of latter proviſion applicable to any ſimilar mehals in Benares.

The ſpirit of this regulation, though not expreſsly extended to Benares, muſt be conſidered applicable to any mehals of the ſame deſcription within that province, to which the proviſions of Regulation XI, 1793, were extended by Regulation XLIV,

* Which may be freely tranſlated " foreſt lands;" though *Jungul* is commonly applied to any wild territory, or waſte ground overrun with trees, brambles, or weeds; and *mehal* is a general term for any diviſion of land, or article of the public revenue.

1795, from the commencement of the Fuſſily year 1204. No ſimilar rules have been enacted for the ceded provinces; and the cuſtom intended to be aboliſhed, or reſtrained by them, does not perhaps exiſt in thoſe provinces to an extent requiring, in policy or juſtice, any alteration of the eſtabliſhed principles of ſucceſſion; whether depending upon written law, or upon immemorial preſcription, the foundation of common law; which in England, "for the moſt part, ſettles the courſe in "which lands deſcend by inheritance."*

Rules ſtated not enacted for ceded provinces, and probably not required therein.

THE regulations which have been cited, for ſupplying aſcertained defects in the Mahomedan and Hindoo laws relative to loans and intereſt; and for carrying them more completely into effect, by the diſcontinuance of a cuſtom deviating from, if not repugnant to, their general principles, in particular caſes of ſucceſſion; with the proviſions that will be ſpecified in a ſubſequent part of this Analyſis, for defining and ſecuring the rights of landlords and tenants; compriſe the whole of the rules which the Britiſh government has yet found it neceſſary to preſcribe, in amendment of the eſtabliſhed laws and uſages of the country, upon matters of private contract and inheritance. What further remedial or ſupplementary laws may be required for the ends of civil juſtice, either as new circumſtances ariſe to call for them, or as judicial experience, and a more perfect knowledge of the Hindoo and Mahomedan laws, may ſuggeſt, will, doubtleſs, be propoſed by the courts of judicature, and adopted, if judged expedient, by government, in the mode provided for by the regulations quoted in the firſt ſection. That ſo ſmall a pro-

Obſervations upon the few amendments made in the laws and uſages of the country, in matters of contract and inheritance.

* As well as "the manner and form of acquiring and transferring property; the ſolemnities and "obligation of contracts; the rules of expounding wills, deeds and acts of parliaments; the reſ-"pective remedies of civil injuries; the ſeveral ſpecies of temporal offences, with the manner "and degree of puniſhment, and an infinite number of minuter particulars which diffuſe themſelves as extenſively as the ordinary diſtribution of common juſtice requires." Vide BLACKSTONE's third introductory ſection on the laws of England; and particularly what relates to the unwritten or common law, as founded upon cuſtom, general or ſpecial, and oppoſed to the *lex ſcripta*, or ſtatute law.

portion

portion of the numerous regulations paſſed in the courſe of twelve years, (ſince 1793) affects the laws and cuſtoms of the country, upon the two extenſive legal heads abovementioned, muſt afford the ſtrongeſt aſſurance to the people, that their preſent Governors have no deſire to interpoſe their legiſlative powers in matters of private right and property without neceſſity for it; and will, it may be preſumed, conciliate their minds to the ready acceptance of any emendatory acts of legiſlation, which may hereafter be found requiſite. A practice, ſaid to be of no long ſtanding, amongſt Mahomedans, of ſettling upon their wives a dower more than equal, in general, to the whole of their eſtates, whereby the children of a ſecond wife, not endowed, and other dependant relatives, are deprived of any part of the inheritance, may perhaps require ſome modification of the Moſulman law; which conſidering *Mihr*, or dower, to whatever amount, as a debt contracted by the deceaſed, has made it payable from his eſtate, as far as there may be aſſets, in preference to any claim of inheritance from the legal heirs; who are conſequently often left in diſtreſs. * To guard againſt frauds, and injury to the real heirs, under the Hindoo law, it may alſo be adviſable to provide for the more ſtrict obſervance of the "notice to the "king," or public magiſtrate, directed by that law in caſes of adoption†; or for ſuch other means as may be effectual to ſecure the object of ſuch notice; publicity in the tranſaction to which it refers. For this purpoſe, it is further directed by the law, that "he who means to adopt a ſon, muſt aſſemble "his kinſmen" and the commentator (JAGANNA'THA) juſtly obſerves "this is intended to ſhew that a ſon, known by kinſ- "men to have been adopted, ſhall take the inheritance and "perform the *ſrádd'ha* (funeral obſequies) and the like; and "they ſhall not moleſt him. The notice given to the king is

The Moſulman law of *Mihr*, or dower, may require ſome modification, under a prevailing practice.

And it may be adviſable to provide for a more ſtrict obſervance of the Hindoo law of adoption.

* Vide tranſlation of the Hedaya, Book II, ch. 3. on the "Mihr, or dower."

† See the text of VASISH'THA "on the ſon given" page 320, vol. 3. of the tranſlated digeſt of Hindoo law.

"intended

" intended for the ſame purpoſe." Theſe caſes are noticed as having frequently attracted the attention of the ſuddèr dewanny adawlut, in various cauſes which have come before that court. But a deſire to obtain full information, and to aſcertain what proviſions would be moſt acceptable to the perſons liable to be affected by them, has hitherto prevented the ſuggeſtion of any new rule, on either ſubject, for the conſideration of the Governor General in Council.

Reaſon for noticing theſe caſes.

DOUBTS having been entertained to what extent the judges of the zillah and city courts are authorized to interfere in caſes wherein any of the native inhabitants may have left wills at their deceaſe, and appointed executors to carry the ſame into effect; or may have died inteſtate, leaving an eſtate, real or perſonal; with a view to remove all doubts on the authority of the zillah and city courts in ſuch caſes, and to apply thereto, as far as poſſible, the general principle preſcribed in Section XV, Regulation IV, 1793, viz. that in ſuits regarding ſucceſſion and inheritance, the Mahomedan law with reſpect to Mahomedans, and the Hindoo law with regard to Hindoos, be the general rules for the guidance of the judges; the following rules were enacted by Regulation V, 1799; and have been re-enacted for the ceded provinces by Section XVI, Regulation III, 1803.

R. V, 1799. C. R. III, 1803. § XVI. Limitation of interference of the zillah and city courts, in the execution of wills and adminiſtration to the eſtates of perſons dying inteſtate.

§ II. " IN all caſes of a Hindoo, Muſſulman; or other perſon ſubject to the juriſdiction of the zillah and city courts, having at his death, left a will, and appointed an executor or executors, to carry the ſame into effect; and in which the heir to the deceaſed may not be a diſqualified landholder, ſubject to the ſuperintendence of the court of wards, under Regulation X, 1793, or any other regulation relative to the juriſdiction of the court of wards; the executors ſo appointed are to take charge of the eſtate of the deceaſed, and proceed in the execution of their truſt, according to the will of the deceaſed,

When a will may be left, and an executor appointed, and the heir be not ſubject to the court of wards.

ceaſed, and the laws and uſages of the country, without any application to the judge of the dewanny adawlut, or any other officer of government, for his ſanction; and the courts of juſtice are prohibited to interfere in ſuch caſes, except on a regular complaint againſt the executors for a breach of truſt, or otherwiſe; when they are to take cognizance of ſuch complaint, in common with all others of a civil nature, under the general rule contained in Section VIII, of Regulation III, 1793; and proceed thereupon according to the regulations; taking the opinion of their law officers upon any legal exception to the executors; as well as upon the proviſion to be made for the adminſtration of the eſtate, in the event of the appointed executor being ſet aſide; and generally upon all points of law that may occur; with reſpect to which the judge is to be guided by the law of the parties, as expounded by his law officers; ſubject to any modifications enacted by the Governor General in Council, in the form preſcribed by Regulation XLI, 1793."

When there may be no will; but the deceaſed may have left a ſon, or other heir, intitled to ſucceed to the whole eſtate.

§ III. "In caſe of a Hindoo, Muſſulman, or other perſon ſubject to the juriſdiction of the zillah or city courts, dying inteſtate, but leaving a ſon or other heir, who, by the laws of the country, may be intitled to ſucceed to the whole eſtate of the deceaſed, ſuch heir, if of age and competent to take the poſſeſſion and management of the eſtate, or if under age, or incompetent, and not under the ſuperintendence of the court of wards, his guardian or neareſt of kin, who by ſpecial appointment, or by the law and uſage of the country, may be authorized to act for him, is not required to apply to the courts of juſtice for permiſſion to take poſſeſſion of the eſtate of the deceaſed, as far as the ſame can be done without violence; and the courts of juſtice are reſtricted from interference in ſuch caſes, except a regular complaint be preferred, when they are to proceed thereupon according to the general regulations."

§ IV

§ IV. "If there be more heirs than one to the eſtate of a perſon dying inteſtate, and they can agree amongſt themſelves in the appointment of a common manager, they are at liberty to take poſſeſſion; and the courts of juſtice are reſtricted from interference, without a regular complaint, as in the caſe of a ſingle heir; but if the right of ſucceſſion to the eſtate be diſputed between ſeveral claimants, one or more of whom may have taken poſſeſſion, the judge, on a regular ſuit being preferred by the party out of poſſeſſion, ſhall take good and ſufficient ſecurity from the party or parties in poſſeſſion, for his or their compliance with the judgment that may be paſſed in the ſuit; or, in default of ſuch ſecurity being given within a reaſonable period, may give poſſeſſion, until the ſuit be determined, to the other claimant or claimants who may be able to give ſuch ſecurity; declaring at the ſame time that ſuch poſſeſſion is not in any degree to affect the right of property at iſſue between the parties; but to be conſidered merely as an adminiſtration to the eſtate for the benefit of the heirs, who may, on inveſtigation, be found intitled to ſucceed thereto."

The ſame rule applicable to more heirs than one, of a perſon dying inteſtate, if they agree in the appointment of a common manager.

But in caſes of diſputed ſucceſſion, ſecurity to be taken from the party in poſſeſſion.

And, in default of ſecurity required, poſſeſſion may be given to other claimants, under ſecurity, until the ſuit be determined.

§ V. "In the event of none of the claimants to the eſtate of a perſon dying inteſtate being able to give the ſecurity required by the preceding ſection, and in all caſes wherein there may be no perſon authorized and willing to take charge of the landed eſtate of a perſon deceaſed, the judge, within whoſe juriſdiction ſuch eſtate may be ſituated (or in which the deceaſed may have reſided, or the principal part of the eſtate may lie, in the event of it's being ſituated within two or more juriſdictions) is authorized to appoint an adminiſtrator for the due care and management of ſuch eſtate, until, in the former caſe, the ſuit depending between the ſeveral claimants ſhall have been determined; or, in the latter caſe, until the legal heir to the eſtate, or other perſon intitled to receive charge thereof as executor, adminiſtrator, or otherwiſe, ſhall attend and claim the ſame; when, if the judge be ſatisfied that the claim

In what caſes the judge may appoint an adminiſtrator, for the eſtates of inteſtates.

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is well founded, or if the ſame be eſtabliſhed after any enquiry that may appear neceſſary, the adminiſtrator appointed by the court ſhall deliver the eſtate to him, with a full and juſt account of all receipts and diſburſements during the period of his adminiſtration."

Security to be given by ſuch adminiſtrators; and allowance to be fixed for them.

§ VI. "In all inſtances of an adminiſtrator being appointed under this regulation, he is, previouſly to entering upon the execution of his office, to give good ſecurity for the faithful diſcharge of his truſt, in a ſum proportionate to the extent thereof; and the judge appointing him is authorized to fix for him (ſubject to the approbation of the court of ſudder dewanny adawlut, to whom a report is to be made in ſuch inſtances) an adequate perſonal allowance, to be paid out of the proceeds of the eſtate; and to be a per centage thereupon, after deducting the expenſes of management."

Judges how to proceed, in caſes of perſons dying inteſtate, and leaving perſonal property, to which there may be no claimant.

§ VII. "The judges of the zillah or city courts, on receiving information that any perſon within their reſpective juriſdictions has died inteſtate, leaving perſonal property; and that there is no claimant to ſuch property; are to adopt ſuch meaſures as may be neceſſary for the temporary care of the property, and to iſſue an advertiſement in the current languages of the country, requiring the heir of the deceaſed, or any perſon intitled to receive charge of his effects, to attend for this purpoſe. Such advertiſement to be publiſhed on the ſpot where the property was found; at the dewanny adawlut cutcherry of the zillah or city; and, if aſcertainable, at the dwelling place of the deceaſed; or if the deceaſed were an European, in the Calcutta Gazette; after which ſhould any perſon attend and ſatisfy the judge of his title to the property, or to receive charge thereof as executor, adminiſtrator, or otherwiſe, the ſame is to be delivered up to him; on repayment of any neceſſary expenſe incurred in the care of it. Should no claim be preferred within the twelve

months

months next enſuing, an inventory of the property, and report of the circumſtances of the caſe, are to be tranſmitted to the Governor General in Council for his orders."

§ VIII. It is further provided, that nothing in the regulation above quoted "is to be underſtood to limit or alter "the juriſdiction of the court of wards in the appointment "of managers, or guardians, for the diſqualified landholders "deſcribed in Regulation X, 1793; or in any caſe wherein "a ſpecial power may be veſted in the court of wards by "the above, or any other regulation." The court of wards, as conſtituted by Regulation X, 1793, for Bengal, Bahar, and Oriſſa, and Regulation LII, 1803, for the ceded provinces, being compoſed of the members of the board of revenue; whoſe duties will form part of the ſubject of the third part of this Analyſis; it will be ſufficient to notice here, that the ſuperintendence of this court "extends to the perſons and "eſtates of all proprietors of entire eſtates, paying revenue "immediately to government, who are or may be females, "not deemed by the Governor General in Council com-"petent to the management of their own eſtates, minors, "idiots, lunatics, or others rendered incapable of managing "their eſtates by natural defects or infirmities of whatever "nature." But the ſuperintendence of the court of wards is declared "not to extend to proprietors of eſtates not pay-"ing revenue immediately to government; nor to joint pro-"prietors of eſtates paying revenue immediately to govern-"ment, both or all of whom may not be of the deſcriptions "ſpecified." Joint proprietors of undivided eſtates, the whole of whom may not be diſqualified by ſex, minority, or otherwiſe, from the management of their lands, are required to elect a general manager; in the choice of whom the guardians of minors, lunatics, idiots, or others having guardians, are intitled to vote for their wards. It is alſo provided by Regulation I, 1800, that "in all caſes of joint undivided eſ-

"tates

Reſervation of the juriſdiction of the court of wards.

Conſtitution of that court under R. X, 1793; and R LII, 1803, for the ceded provinces.

To what perſons and eſtates its ſuperintendence extends.

To what proprietors of eſtates, its ſuperintendence does not extend

General manager to be elected by joint proprietors of undivided eſtates, the whole of whom may not be within the juriſdiction of the court of wards.

R I, 1800, In what caſes the zillah and city judges,

under the controul of the ſudder dewanny adawlut, may appoint guardians for minor, and other proprietors of ſhares in joint eſtates, not ſubject to the court of wards.

"tates, when one or more of the proprietors ſhall die, leaving "heirs who are under age, lunatics, or idiots; and without "nominating by will, a guardian or guardians to the heirs; "it ſhall be the duty of the judge, within whoſe juriſdiction "ſuch eſtate may be ſituated (or the principal part of it, in "the event of it's being ſituated in two or more juriſdictions) "on the receipt of a report from the collector, or from any "other perſon or perſons intereſted in the welfare of the "family of the deceaſed, ſtating the grounds on which he or "they may conſider the next of kin as unfit to be entruſted "with the care of the perſon, or management of the eſtate, "of the heir, to inveſtigate the nature of the objections to the "neareſt of kin; and if ſatisfied, that they are well founded, "the judge ſhall nominate ſome other perſon of character "and reſpectability to act as guardian of the heir; reporting "the circumſtance in every inſtance to the court of ſudder "dewanny adawlut. In the ſelection of guardians to be ap-

Rule to be obſerved in the ſelection of ſuch guardians.

"pointed under this regulation, the judge is to attend particu-"larly to their capacity, character and reſponſibility; but the "guardianſhip is in no inſtance to be entruſted to the legal "heir of the ward, or other perſon intereſted in outliving "him. It is expected that ſome friends of the family to the "deceaſed will gratuitouſly diſcharge the truſt of guardian;

And what compenſation to be paid for them, in caſes requiring it.

"but if, on any occaſion, it may become neceſſary to make a "pecuniary compenſation to the perſon appointed to act as "guardian, the amount of ſuch compenſation is to be fixed "by the judge on a due conſideration of the circumſtances of "the caſe." The guardians ſo appointed are to be furniſhed

Commiſſion to be granted to ſuch guardians; ſecurity to be given by them; and obligation to be executed by them.

with a commiſſion under the official ſeal and ſignature of the judge; previouſly to the delivery of which they are to give ſecurity for their appearance during the continuance of their truſt; and are to execute a ſolemn obligation for the zealous and faithful diſcharge of it. They are to have the care of the

Functions of guardians ſo appointed.

perſons, maintenance, and, if minors, the education, of their wards; are to vote in the election of a manager for the joint undivided

undivided eſtate; and are to receive from the latter ſuch portion of the profits ariſing from the eſtate, as their wards may be intitled to, on a fair diſtribution. "If any perſon ſhall think "himſelf aggrieved by any act done by any of the zillah "judges in the exerciſe of the authority veſted in them by "this regulation; he is at liberty to ſtate his complaint by "petition, either to the judge in perſon, or to the court of "ſudder dewanny adawlut, and whenever any ſuch com-"plaint ſhall be made, the judge is to certify a copy of the "petition, and of all his proceedings in the caſe to which it "relates, to that court; who are authorized to confirm or "reſcind his deciſion as to them ſhall appear juſt and pro-"per; and their judgment in all ſuch caſes is declared to "be final." It has not been deemed neceſſary to extend the authority of the court of wards to the province of Benares. But the proviſions above quoted from Regulation I, 1800, for the appointment of guardians by the courts of juſtice, were enacted for that province; as well as for Bengal, Bahar, and Oriſſa. They have not however been yet re-enacted for the ceded provinces.*

Perſons aggrieved by acts of the zillah (or city) judges in the exerciſe of the powers veſted in them, how to obtain redreſs.

With a view to give ſecurity, and prevent frauds, in the transfer of lands, houſes, and other immovable property, by ſale or gift; as well as in the mortgage, leaſe, or other aſſignment, of ſuch property; and to afford all perſons the means of guarding againſt litigation, reſpecting the authenticity of their wills, or of the written authorities which Hindoos ſometimes grant to their wives for the adoption of ſons after their own deceaſe; an office for the regiſtry of deeds, in each of the zillahs and principal cities, has been eſtabliſhed by Regulation XXXVI, 1793; (extended to Benares by Regulation XXVIII, 1795;) and by Regulation XVII, 1803, for the ceded provinces. The ſuperintendence of this office is

R. XXXVI, 1793, extended to Benares by R. XXVIII, 1795. C. R. XVII, 1803. Purpoſe of eſtabliſhing an office for the regiſtry of deeds, in each zillah and city.

Superintendence of it, to

* The proviſions referred to, have been recently extended to the ceded provinces by Regulation VIII, 1805.

committed

Whom committed.

committed to the regiſter of the zillah or city court; who

Oath preſcribed.

is bound by oath to the faithful execution of it; and not to

And fees authorized.

derive from it any benefit whatſoever beyond his authorized fees viz. two rupees for every deed regiſtered by him; one rupee for every copy furniſhed of a regiſtered deed; and half a rupee for every ſearch made on an inſpection of the regiſtry books. In caſes of abſence, ſickneſs, or other inability to give perſonal attendance, the regiſter, with the approbation of the judge, is permitted to appoint a deputy, being a covenanted ſervant of the Company, to act for him, as regiſter of deeds, after taking the preſcribed oath. The ſeveral deſcriptions of deeds to be regiſtered, are, *Firſt* "deeds "of ſale or gift of land, houſes, and other real property." *Secondly* "deeds of mortgage on land, houſes and other real "property; as well as certificates of the diſcharge of ſuch "incumbrances." *Thirdly* "leaſes and limited aſſignments of "land, houſes and other real property, including generally "all conveyances uſed for the temporary transfer of ſuch "property." *Fourthly* "Wuſſeatnamahs or wills." *Fifthly* "written authorities from huſbands to their wives, to adopt "ſons after their own demiſe." It is left to the option of all perſons to regiſter, or not, as they may think proper, any of the above deſcriptions of deeds excuted previouſly to the periods fixed for the operation of the regulations; viz. the 1ſt January, 1796, in Bengal, Bahar, Oriſſa and Benares; and the 24th March, 1801, in the ceded provinces; as well as the third, fourth, and fifth deſcriptions of deeds ſpecified, whenever the ſame may have been, or may be hereafter, executed. It is provided that the not regiſtering any ſuch deeds "ſhall in no wiſe operate to the prejudice of the rights of the "parties thereto." But that every deed of ſale, gift, or mortgage, coming within the firſt or ſecond of the deſcriptions ſpecified, which may be executed, on or after the dates ſtated, and a memorial of which may be duly regiſtered according to the regulations, ſhall, if its authencity be eſtabliſhed to the ſatisfac-

Provision for appointment of a deputy, when requiſite.

What deeds to be regiſtered.

Of what deeds the regiſtry to be optional, without any prejudice to the rights of parties.

Preference to regiſtered deeds of ſale, gift, or mortgage, of immovable property, if executed after the period fixed for the operation of this regulation.

tion

tion of the court, invalidate any other deed of ſale or gift for the ſame property; or if a mortgage deed, ſhall be ſatisfied in preference to any other mortgage of the ſame property, which may have been executed ſubſequently to the periods fixed for the operation of the regulations, and may not have been regiſtered; whether ſuch unregiſtered deed ſhall have been executed before or after the regiſtered deed. The object of this rule however being to prevent frauds in the purchaſe, gift, or mortgage, of real property which may have been before ſold, given, or mortgaged; and as no perſon can ſuffer ſuch impoſition when apprized of a previous transfer or mortgage; it is declared that "if any perſon ſhall purchaſe, receive in gift, or take in "mortgage, any real property, knowing ſuch property to have "been previouſly ſold, given, or mortgaged to any other per-"ſon; and that the deed of ſale, gift, or mortgage, has not been "regiſtered; and ſhall regiſter his own deed; in ſuch caſe the "deed of ſale, gift, or mortgage of ſuch ſubſequent purchaſer, "donee, or mortgagee, which may have been regiſtered, ſhall "not, from the regiſtry of it, invalidate, or be diſcharged in "preference to the unregiſtered deed of ſale, gift or mortgage, "firſt executed; provided the authenticity of the latter be eſta-"bliſhed to the ſatisfaction of the court." *

But not, if a previous transfer or mortgage were known at the time of a ſubſequent ſale, gift or mortgage, of the ſame property.

THE regulations further direct that "the regiſtry of all deeds "ſhall be made in the regiſter's office of the zillah or city in which "the property affected by them may be ſituated;" and if ſituated in two or more juriſdictions, that "the deeds affecting it ſhall "be regiſtered in the office of each juriſdiction." The perſon or perſons executing the deed, or their authorized repreſentatives, with one or more of the witneſſes to the execution of it, are required "to attend at the regiſter's office, and prove by oath be-

Regiſtry were to be made.

On what evidence.

* It has further been declared by government (on a reference from the ſudder dewanny adawlut made November 14th, 1788,) that although all deeds duly preſented for regiſtry under this regulation are to be regiſtered; they derive no validity from the regiſtry, if invalid under any other regulation in force.

"fore

And in what form.

" fore the regiſter, the due execution of the deed;" after which it is to be regiſtered in a preſcribed form, and entered, under the ſignature of the regiſter, and the parties or their repreſentatives, and of two creditable witneſſes, in a regiſtry book; to be kept ſeparately for each ſpecies of deed; and to be atteſted, on each leaf, by the zillah or city judge; who is to note, on the laſt page of each book, the number of pages contained in it, and to atteſt the ſame with his official ſignature; without which no regiſtry book is to be deemed authentic. The original deed, after the regiſtry of it, is to be returned, with a certificate endorſed upon it, " ſpecifying the date, and the time of the day, " on which ſuch deed ſhall have been regiſtered; with refer- " ences to the book containing the regiſtry thereof, and the " page and number under which the ſame ſhall have been en- " tered." The certificate ſo endorſed is to be conſidered in all courts of juſtice ſufficient evidence of the regiſtry. Perſons ſuſpected, upon ſufficient grounds for commitment, of counterfeiting or falſifying any ſuch certificate, or any entry in the regiſtry books, are to be proſecuted on the part of government in the criminal courts; and the regiſters, as agents for the proſecution, are " to adopt every legal meaſure in their " power for the proof of the crime, and the due execution of " the laws againſt the offender." The regiſters are alſo to allow all perſons, upon application to them, to inſpect the regiſtry books; and to grant copies of all deeds regiſtered by them to any perſons whom they may concern. Such copies, in the event of the originals being loſt, deſtroyed, or otherwiſe not forthcoming, to be received as evidence, on proof " by " the ſubſcribing witneſſes to the original deed that the origi- " nal was duly executed." But under the regulations for levying a ſtamp duty, all application preferred to the regiſters of deeds, and all copies of deeds furniſhed by them, are required to be written upon ſtampt paper; viz. the petitions of application upon the paper preſcibed for judicial pleadings; and copies of deeds upon that preſcribed for law papers. The

Certificate of regiſtry to be endorſed on the deed.

And to be conſidered ſufficient evidence of the regiſtry.

Counterfeiting or falſifying any ſuch certificate, or entry in regiſtry books, to be proſecuted by regiſters, in the criminal courts.

Inſpection of regiſtry books to be allowed.

And copies of deeds granted to parties concerned.

On what proof, ſuch copies to be received as evidence.

R. VII, 1800, § XXIV. C. R. XLIII, § 1803, XIII.

Applications to regiſters of deeds, and copies furniſhed by them, to be on ſtampt paper.

duty

duty upon the former may be remitted, as upon miſcellaneous petitions, in caſes of poverty. But the ſtampt paper for the latter " is to be ſupplied by the party who may deſire to " be furniſhed with ſuch copies."

Duty on the former may be remitted in caſes of poverty.

Put ſtampt paper for the latter to be ſupplied by parties deſiring copies.

TRANSLATONS of the foregoing rules were directed, by the concluding ſection of Regulation XXXVI, 1793, to be tranſmitted by the zillah and city judges " to each of the cauzees in " their reſpective juriſdictions. " It is further made a general rule by Regulation XXXIX, 1793, (extended to Benares by Regulation XLIX, 1795,) and Regulation XLVI, 1803, for the ceded provinces, that the judges ſhall furniſh the cauzees, who are ſtationed in their juriſdictions, with tranſlates of all regulations printed and publiſhed in the preſcribed form. The judicial functions, which were exerciſed by ſome of the officers of this denomination under the Mahomedan government, have been diſcontinued ſince the eſtabliſhment of courts of juſtice under the ſuperintendence of Britiſh judges; and with an exception to the law officers, attached to the civil and criminal courts, the general duties of the preſent cauzees, ſtated at the principal cities and towns, and in the pergunnahs which compoſe the ſeveral zillahs or diſtricts, are confined to the preparation and atteſtation of deeds of conveyance, and other legal inſtruments; the celebration of Moſulman marriages; and the perſormance of the ceremonies preſcribed by the Mahomedan laws, at births and funerals; or other rights of a religious nature. They are eligible however, under the regulations, to be appointed commiſſioners for the ſale of property diſtrained on account of arrears of rent; as well as commiſſioners for the trial of cauſes, with the powers of referee and arbitrator, or thoſe of munſiff, before deſcribed; and are alſo intruſted by government, in certain caſes, with the payment of public penſions, not exceeding fifty ſicca rupees per annum; as will be hereafter more fully ſtated. It is therefore neceſſary that perſons of character, who may be duly qualified

R. XXXIX, 1793, extended to Benares by R. XLIX, 1795. C. R. XLVI, 1803. Tranſlations of foregoing rules, and all public regulations, directed to be tranſmitted to the cauzies, ſtationed in the ſeveral cities and zillahs.

Preſent duties of the city, town, and purgunnah, cauzies.

R. VII, 1799. § VI. B. R. V, 1800. § VI. C. R. XXVIII, 1803, § XXVII. Eligible to be commiſſioners for ſale of diſtrained property; and for trial of petty cauſes.

R. XXIV, 1793, § XV. B. R. XXXIV, 1795, § XII. Alſo entruſted with payment of penſions, in certain caſes.

quaſified for the ſubſiſting office of cauzy, ſhould be appointed to that ſtation; and encouraged to diſcharge the duties of it with diligence and fidelity, by not being liable to removal, without proof of incapacity or miſconduct, to the ſatisfaction of the Governor General in Council. The cauzy-ul-cuzzat, or head cauzy of the ſeveral provinces under this preſidency, and the cauzees ſtationed in the cities, towns, or pergunnahs within thoſe provinces, were accordingly declared by Regulations XXXIX, 1793, and XLVI, 1803, not to be removable from their offices, except for incapacity or miſconduct in the diſcharge of their public duties, or for acts of profligacy in their private conduct; and by Section X, Regulation V, 1804, the rules which have been already noticed, concerning the appointment and removal of the law officers and principal miniſterial officers of the courts of juſtice, are extended to the cauzees. It is further provided, that when the office of cauzy in any pergunnah, city or town, ſhall become vacant, the judge, within whoſe juriſdiction "the place may be ſituated, is to recommend "ſuch perſon as may appear to him beſt qualified for the "ſucceſſion from his character and legal knowlege." The name of the perſon ſo recommended is to be communicated to the head cauzy; who, "if he ſhall deem him unqualified "for the office, either from want of legal knowledge, or the "badneſs of his private character, is to report the ſame in "writing." It is likewiſe "the duty of the heady cauzy to "report every inſtance in which it may appear to him that "the cauzy of any city, town, or pergunnah is incapable; "or in which any ſuch cauzy may have been guilty of miſ-"conduct in the diſcharge of his public duty, or acts of "profligacy in his private conduct." All perſons appointed to the office of cauzy ſhall receive a ſunnud, or patent, under the official ſeal of the head cauzy; which by the ſtamp regulations is required to be written on ſtampt paper, bearing a duty of twenty five rupees.

Rules enacted for the appointment and removal of cauzies.

Proviſions in R. V, 1804, § X, extended to them.

In what manner vacancies to be filled.

Reference to be made to head cauzy.

And report to be made by that officer in caſes of miſconduct, or incapacity, of any city, town or pergunnah, cauzy.

R. VI. 1797, § XXV. C. R. XLIII. 1803, § XVIII. Sunnud to be received by cauzies.

"THE

" THE head cauzy and the cauzees ſtationed in the cities, " pergunnahs, and towns, are to keep copies of all deeds, " and law or other papers, which they may draw up or at- " teſt; and are to fix thereto their ſeal and ſignature. They " are likewiſe to keep a liſt of all ſuch papers; and in the " event of their death, reſignation, or removal, the liſt and " papers are to be delivered complete to the ſucceſſors." A tax upon marriages which had been levied by the former government, at a rate varying from three to four rupees, was aboliſhed by the committee of circuit in the year 1772, as injurious to the population of the country; and with a view to encourage matrimony, the marriage fees, which were then received by the cauzees, at the eſtabliſhed rates of two rupees from the principal inhabitants, one rupee eight annas from the middling claſs, and one rupee from the lower claſſes, were ordered to be diſcontinued. The cauzees and mooftees employed at fixed ſalaries, as officers of the courts of juſtice, were directed to atteſt all writings, and to perform all ceremonies of marriages, births, and funerals, without exacting any fees whatever. But the prohibition was declared not to extend to any preſent, or gratification, made on the occaſion of a marriage, or funeral, with the entire free will of the party.* In purſuance of this principle, it is provided by Section VIII, Regulation XXXIX, 1793, (reſcinded in part by the firſt clauſe of Section XVI, Regulation VI, 1797, but reſtored in full by Section XII, Regulation VII, 1800;) and by Section VIII, Regulation XLVI, 1803, for the ceded provinces, that " the cauzees ſtationed in the cities, towns and pergun- " nahs, are not to exact any fees for drawing up or atteſting " papers, or for the celebration of marriages, or the perform- " ance of any religious duties, or ceremonies which it has been " cuſtomary for them to perform, excepting ſuch as the

R XXXIX, 1793, § VII. C R. XLVI, 1803, § VII Copies and liſts of atteſted deeds and law papers to be kept by cauzees and delivered to their ſucceſſors.

Former tax, and cauzy's fee, on marriages aboliſhed in 1772; and free gifts only allowed, for performance of nuptial or funeral ceremonies.

The ſame principle continued in exiſting proviſions for a voluntary fee only, on account of marriages; and all religious duties performed by cauzies; as well as for papers drawn or atteſted by them.

* Vide letter from the committee of circuit to the Governor and Council, dated 15th Auguſt 1772; And article 33 of the plan for the adminiſtration of juſtice, which accompanied it. Appendix No. 2 to the fifth report from committee of ſecrecy, 1773.

parties

Cauzees declared liable to a civil action for any undue practices.

"parties concerned may voluntarily agree to pay; as has "been hitherto the practice." They are at the ſame time declared liable to be ſued in the civil courts "for any undue "practices in the diſcharge of the duties preſcribed to them." It may be added that the fees and preſents to the officiating prieſts at Hindoo marriages, funerals, and other ceremonies, are in like manner left to be determined by the will of the parties; and are uſually proportioned to their rank and circumſtances.

Fees and preſents to officiating Hindoo prieſts, alſo left to will of the parties.

And no regulation of them, or of the appointment of the Hindoo prieſthood, appears neceſſary or expedient.

As every Hindoo family has it's proper *purohit*, or prieſt, who aſſiſts in the performance of all ſacred or ſolemn rites, it would be obnoxious, if not impracticable, to frame any regulation, either for the appointment of the Hindoo prieſthood; or for limiting the compenſation to be received by them; and experience has not ſhewn that any alteration of eſtabliſhed uſage, in theſe reſpects, is required.

Importance of ſtrictly obſerving the rule for furniſhing tranſlations of all new regulations to the city, town, and pergunnah cauzees.

THIS ſection, and with it the firſt part of this Analyſis (which has been extended to an unexpected length, but includes one half of the entire code of regulations *) may be cloſed with a remark, that the rule for furniſhing the city, town, and pergunnah cauzees, with tranſlations in the current languages of all new regulations, being obviouſly intended to promote the publication of them; an object of the greateſt conſequence to the people affected by them; it ſhould be moſt carefully obſerved; and to maintain it's intended effect, whenever a cauzy may be appointed, it ſhould be an invariable rule to deliver over to him the whole of the regulations which may have been received by his predeceſſors.

Suggeſtion, for maintaining its intended effect, of promoting the publication of them.

* The regulations for Bengal, Bahar, Oriſſa, Benares, and the ceded provinces, from May 1793, to the ſame month in the preſent year, 1805, occupy nearly 1500 printed leaves, of ſmall folio; or 3000 pages. The regulations compriſed in the three ſections, which conſtitute the firſt part of this Analyſis, have been computed to fill about 1500 pages. Regulation II, 1805, enacted in the month of Februrary (when this work was commenced) is the lateſt that could be included in the text. But the notes contain a brief recital of further regulations, concerning civil juſtice, which have been paſſed (whilſt the preceding ſheets were in the preſs) to the end of July 1805.

The

The inhabitants can then never be at a loſs where to apply for information of the laws and rules in force, upon any ſubject; and were a ſimilar practice adopted, with reſpect to the police officers and munſiffs; or the former ſupplied with all regulations concerning criminal juſtice and police; the latter with all other regulations; and both required, under penalties, to deliver them complete to their ſucceſſors; it would eſſentially promote the important purpoſe of the legiſlative proviſions, which have been ſtated, for promulgating "all regulations paſſed by government, affecting "in any reſpect the rights, perſons, or property, of their "ſubjects;" and enabling "individuals to render themſelves "acquainted with the laws, upon which the ſecurity of the "many ineſtimable privileges and immunities granted to them "by the Britiſh Government, depends." *

That the natives may know the laws, upon which the ſecurity of their rights and privileges depends.

* As ſome interval may unavoidably elapſe before the ſucceeding parts of this work can be prepared and printed; a ſummary of the contents of the Firſt Part is annexed. The publication of this part having taken place, after the re-appointment of MARQUESS CORNWALLIS to the Government General, (of which his Lordſhip received charge on the 30th July 1805,) it has alſo appeared proper to prefix a dedication of this Analyſis to MARQUESS WELLESLEY, by whoſe deſire it was undertaken, as ſtated in the Introduction. A general Index and table of *errata*, will be given with the concluding Part.

END OF FIRST PART.

SECOND PART.

SECTION I.

ON THE MOHUMMUDAN CRIMINAL LAW.

THE Courts of Judicature, eſtabliſhed on the part of the Eaſt India Company, throughout their territorial poſſeſſions, are required, in the adminiſtration of criminal juſtice, to be guided by the Mohummudan law; excepting caſes, wherein a deviation from it may have been expreſsly authorized by the Regulations of the Britiſh Government. It will therefore be uſeful to give a general view of ſuch parts of the Mohummudan law, as have immediate relation to crimes and puniſhments; previouſly to exhibiting the amendments of it, which have been enacted by the Regulations of the Governor General in Council. The reaſons, which led to ſuch amendments, will, by this means, be rendered more intelligible; and the expediency of the proviſions, which have been made for an efficient adminiſtration of criminal juſtice, will be more clearly and eaſily appretiated. It may further tend to bring into notice ſuch defects, in the penal laws of the country, as ſtill remain to be remedied.

Laws in force, for the adminiſtration of criminal juſtice, in the Company's courts of judicature.

Reaſons, in conſequence, for giving a general view of the Mohummudan penal law.

THE baſis of Mohummudan law, religious, civil, and criminal, is the *Korán*; believed to be of divine origin, and

Foundation of the Mohummudan law, religious, civil, and criminal.

to have been revealed by an angel to MOHUMMUD; who cauſed it to be written and publiſhed, from time to time, as occaſion required, for the refutation of his opponents, or the inſtruction and guidance of his followers: though the hundred and fourteen *Sŏŏwur*, or chapters, which compoſe the *Korán*, were not digeſted, in their preſent form, until after the death of MOHUMMUD; when they were collected by his immediate ſucceſſor ABOO BUKR; and were afterwards, in the 30th year of the *Hijrah*, tranſcribed, collated, and promulgated, by order of the *Khuleefah* ÔTHMA'N.*)

Ordinances of the *Korán* or written law, in what caſes deciſive.

THE *Korán* being thus conſidered the written word of GOD, its texts, when clear and applicable, and not abrogated by other texts of ſubſequent revelation, are unqueſtionable and deciſive. But, (as remarked by an eminent hiſtorian.†) "In all religions the life of the founder ſupplies the ſilence "of written revelation: the ſayings of MAHOMET were ſo "many leſſons of truth; his actions ſo many examples of vir-"tue; and the public and private memorials were preſerved "by his wives and companions." In fact, the ordinances of the *Korán*, in civil affairs, are few and imperfect; and muſt have proved altogether inadequate to provide for the various objects of legiſlation, in a large and civilized community, without the aid of the *Sŏŏnnut*; or rule of conduct, deduced from the oral precepts, actions, and deciſions, of the prophet. Theſe were not committed to writing by MOHUMMUD; but were collected after his death, by tradition, from his companions, (the *Sahābah*;) their contemporaries, (*Tábiĭeen*, literally, followers;) and ſucceſſors (*Tubâ-i-tábi-ieen*;) and the authentic traditions, which have been preſerved in numerous compilations of *Ahādees*, (*dicta, factaque*; precepts and tranſactions); *Sŏŏnun*, (*inſtituta vitæ, exempla*; rules of practice and examples); or *Riwáyát*, (*relationes*, reports;) conſtitute a ſecond

Its imperfections ſupplied by the *Soonnut*, or traditional law.

Authority of the traditions which compoſe the *Soonnut*.

* V. SALE's Preliminary Diſcourſe, Section III.

† In Chap. L. of the *Decline and fall of the Roman Empire*, relative to *Arabia*.

authority

authority of Moſulman law; concluſive (if the authenticity and application of the traditions be admitted) in all caſes not expreſsly determined by the words of the *Korán.**

Different readings and interpretations of the *Korán*, as well as difference in admitting the traditions, from religious ſchiſms.

THE ſchiſms and diſſentions, however, which took place among the Mohummudans, after the demiſe of their legiſlator and founder, eſpecially the conteſt for the ſucceſſion to the *Khilāfut*, or pontificate, which gave riſe to the *Shiyâ*, or ſectaries of ÂLEE, have occaſioned various differences and diſagreements, both in reading and interpreting the word of the *Korán*, and in admitting or rejecting the traditions, which compoſe the oral law. There appears to be an error, or verbal inaccuracy, in the obſervation of the learned, and in general accurate, tranſlator of the *Korān*, that "the *Sonnites* "receive the *Sonna*, or book of traditions of their prophet, "as of canonical authority; whereas the *Shiites* reject it "as

Traditions admitted by the ſectaries of *Alee*.

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* The collections of traditions held in the moſt general eſtimation, as genuine and authoritative, by the *Sŏŏnees*, or orthodox traditioniſts, are the following; denominated *Sihāh-i-ſittah*; or the *ſix authentics*.

1. *Saheeh-i Bokhāree*. Compiled by ABOO ÂBDŎŎLLAH, MOHUMMUD, of *Bokhārā*. He was born A. H. 194; and died in the year 256; in the ſuburbs of *Sumurkund*. His compilation is ſaid to contain above ſeven thouſand traditions; ſelected from 300,000.

2. *Saheeh-i Mŏŏſlim*. By ABOO'L HOSĒN, MŎŎSLIM, of *Nyſhāpoor*. He died A. H. 261; and is alſo ſaid to have compiled his work from 300,000 traditions. This and the preceding collection, when cited together, are called *Saheehyn*, or the *two authentics*.

3. *Sŏŏnun-i-Ibn-i Mājah*. By MOHUMMUD-BIN-I YUZEED, BIN-I MÁJAH; of *Kuzveen*. (Erroneouſly named BEN MOHUMMUD, in D'HERBELOT. Title *Sonan Ebn Magiah.)* He died at *Kuzveen*, in *Irák*, A. H. 273.

4. *Sŏŏnun-i Aboo Dāpod*. By ABOO DÁPOD, SOLÝMÁN, of *Sijiſtán*. He was born A. H. 202; and died at *Buſrah*, in the year 275. His work is ſtated to conſiſt of 4,800 traditions, ſelected from 500,000.

5. *Jámâ-i Tirmizee*. By ABOO ÎEESÁ, MOHUMMUD, of *Tirmiz*, in *Toŏrkiſtán*. He is alſo ſurnamed ZUREER or DHUREER, from his blindneſs. His birth was A. H. 209; and his death in 279. His compilation is noticed by D' HERBELOT, under the title of *Giame al Kebir*; and is erroneouſly cited (apparently from D'HERBELOT,) in HAMILTON's Preliminary Diſcourſe, page 36, as quoted in the *Hidáyah*; inſtead of the *Jámâ-i-Kubeer*, on *fik-h*, or juriſprudence, by IMÁM MOHUMMUD.

6. *Jámâ-i Niſáee*; called alſo *Sŏŏnun-i Niſáee*. By ABOO-I ÂBD-ŎŎ, RAHMÁN AHMUD, of *Niſá*, a city of *Khoráſán*. He was born A. H. 215; and died in the year 303. This collection is ſelected from a former compilation, by the ſame author, called the *Sŏŏnun-i-kŏŏbrá*; and mentioned by D' HERBELOT, under the title of *Sonan Al Kebir*.

The four works laſt mentioned, when cited collectively, have the deſignation of *Sŏŏnun-i-urbâ*, or the four collects of traditions. The ſhort notices, which have been given, of their compilers,

and

" as apocryphal, and unworthy of credit."* From this remark it might be inferred, that the *Shiyâ* reject the traditions altogether; whereas they admit many which are not deemed authentic, and are consequently rejected, by the *Sŏŏnees*. They have also their collections of *Ahádees*, and *Sŏŏnun*, which they deem genuine and authoritative.† The difference between them, and the *Ahl-i-Sŏŏnnut*, or orthodox traditionists, who, as remarked by Mr. HAMILTON, appear to have assumed this title of distinction, " in opposi- " tion to the innovations of the sectaries," ‡ lies, as far as respects the traditions, in the different authorities, which are admitted by the two sects for the *Ahádees*, received by

Difference between the *Soonees* and *Shiya*, in admission of traditions.

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and of the authors of the *Saheehyn*, are taken chiefly from the *Mirát-ŏŏl-âálum*, an esteemed general history composed by BUKHT-YÁR KHÁN, in the reign of AURUNZÉB. They are confirmed, with many other particulars, in the *Mishkát*, a work of authority on the traditions admitted by the *Sŏŏnees*; and used, as a class book, in Mosulman Colleges, with the *Saheeh-i Bokháree*, and *Saheeh-i Mŏŏslim*. The author, SHYKH WÁLEEDŎŎ'DEEN, ABOO ÂBDŎŎLLAH, MAHMOOD, who finished his undertaking (to verify and illustrate the traditions contained in a former compilation, called the *Musabeechŏŏ'soonnut*, by HOSÉN BIN-I MUSCŎŎD, FURÁEE) A. H. 737, states that the *Mowutta* of MÁLIK BIN ANS, (the founder of the second orthodox sect, who died A. H. 179) is, by some reckoned one of the six authentic collections, instead of the *Sŏŏnun-i Ibn-i Májah*. He adds that others are of opinion, the *Dárumee*, compiled by ABOO MOHUMMUD ÂBDŎŎLLAH of *Sumurkund*, surnamed DÁRUMEE, who was born A. H. 181, and died in 255, should be classed as the sixth authentic. But he has himself given this place to the compilation of MOHUMMUD, the grandson of MÁJAH; and it is commonly placed third in the series, with reference to the supposed order of publication.

* SALE's Preliminary Discourse, Section VIII.

† MOÚLAVEE SIRÁJ ŏŏ'DEEN ÂLEE (one of the Law Officers of the Courts of *Sudr Deewánee* and *Nizámut Ádálut*, as well as of the Supreme Court, and employed by the late Sir W. JONES, to compile the *Sheeâh* part of a Digest of Mosulman Law, upon contracts and inheritance) states the *Kŏŏtŏŏb-i urbâ*, or four books of traditions, held authentic by the *Shiyâ*, to be the following:

1. *Tahzeeb*. 2. *Istibsár*. Both compiled by ABOO JÂFUR MOHUMMUD, of *Toos*, in *Khorásán*.

3. *Jámâ-i Kâfee*. By MOHUMMUD BIN-I YÂKOOB. Of *Ry*, in *Persian Irák*.

4. *Mun lá Yahzŏŏrh ŏŏl-fukeeh*. By MOHUMMUD BIN ÂLEE, of *Komm*, also in *Irák i Ajum*.

The third of these collections, which quotes the compiler of the two first, is said to have been presented to IMÁM MAHDEE, who was born A. H. 255. The author of the fourth compilation is stated in the *Mujális ŏŏl-Mŏmuneen*, to have been contemporary with, and protected by, the Persian King ROKN-ŎŎ'DOULAH, who died, A. H. 366.

‡ Preliminary Discourse to his translation of the *Hidáyah*, page 22. His observation, at length, is "The Mussalmans, who assume to themselves the distinction of orthodox, are such " as maintain the most obvious interpretation of the *Koran*, and the obligatory force of the tra- " ditions, in opposition to the innovations of the sectaries; whence they are termed *Soonis*, or " traditionists." This, however, is partly open to the same objection, as has been stated to the remark of Mr. SALE.

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them reſpectively. The *Sŏonees* allow traditionary credit to the *Sahábah*, or companions of their Prophet; eſpecially to the moſt eminent amongſt them, or thoſe who had the longeſt and moſt familiar intercourſe with MOHUMMUD; and to the *Khoolfá-i ráſhideen*, or the four *Khuleefahs*, who were the immediate ſucceſſors of the Prophet; and inſtructed by him in the principles, and tenets of his religion. Alſo to ſeveral intelligent and learned men, who were contemporary with the companions and firſt *Khuleefahs*, and who are included in the general deſcription of *Tábi'een* already mentioned; as well as to others, who ſucceeded theſe; (the *Tábâ-i-tábi-în;*) and have verified their reports of traditions, by citing the names of the perſons, through whom they were ſucceſſively traced to their genuine ſource, the inſpired Apoſtle of GOD.*

Authorities admitted by the *Soonees*.

THE *Shiyá*, on the contrary, give no authority, or credit, to the three firſt *Khuleefahs*. ABOO BUKR, ÔMUR and ÔTHMÁN; nor to any other companions of MOHUMMUD, excepting ſuch as were partiſans of ÂLEE. They extend their faith and obedience, however, to the admiſſion of all traditions of their Prophet's ſayings and actions, which they believe to have been verified by any one of the twelve *Imáms*; from whom they take their denomination of *Imámeeyah*; as well as to the precepts and examples of thoſe *Imáms* themſelves; the whole of whom they venerate, as being the lineal deſcendants (through FÁTIMAH) and, according to their tenets, the rightful ſucceſ-

Authorities of the *Shiyá*.

* The nature of this treatiſe does not admit of a fuller account of the *Sŏonee* traditions; which are diſtinguiſhed by ſome authors as *Saheeh* (authenticated); *Huſun* (approved); *Zaïeef-ó-ghureeb* (weak and poor); *Mŏonkur-ô-moúzooâ* (denied and impoſed): by others, as *Mŏoſnud* (vouched or certified); and *Mŏorſul*, or *Mŏonkutâ* (detached or divided). The *Mŏoſnud* are alſo ſubdivided as *Murfoo'â* (aſcending to the Prophet); *Moúkoof* (reſting with the *Sahábah*); and *Muktoo'â* (ſevered or cut ſhort among the *Tabi'een*); or by another claſſification as *Mŏotawâtur* (repeated, ſucceſſive); *Muſh,hoor* (public, notorious); and *Wáhid* (ſingle, particular). The *Miſhkát*, referred to in a former Note, has however been tranſlated by an officer of the Bengal Eſtabliſhment, and if it receive ſufficient encouragement to repay the heavy expence of printing in India, it will be ſpeedily publiſhed.

ſors of MOHUMMUD; and the laſt of whom they believe to be ſtill living, though inviſible; it having been predicted of him, that he will return to judge and rule the world; to puniſh ſinners, and thoſe who have departed from the true faith; and to reſtore and confirm the genuine truths of religion, with piety, juſtice, and every other virtue.*

Further legal authorities received by the *Sŏonees*, in caſes not provided for by the *Koran* and *Sooonut*.

WHEN neither the written nor oral law preſcribes a rule of deciſion, the concurrence of the companions of MOHUMMUD (*Ijmā'â-i Sahabah*) is received by the *Sŏonees*, as a third ſource of legal authority: and if this alſo fail, they allow the validity of reaſon, reſtricted by analogy, (*Kiyās*,) in applying, by inference, the general principles of law and juſtice, to the various tranſactions and circumſtances of the changeful ſcene of human life; which, as they could not be all foreſeen, it was impoſſible they ſhould be completely and expreſsly provided for. This is ſo clearly ſtated, with the origin of the principal *Sŏonee* ſects, who agree in matters of faith, (*âkā'eed*), but differ on points of practical juriſprudence, (*fik-h*,) in a ſection of the *Mokhtiuſur ŏo dowul* (compendium of dynaſties) of GREGORIUS ABOO'L FURUJ, tranſlated (into Latin) by POCOCK, in his *Specimen Hiſtoriæ Arabum*; that the following Engliſh verſion, will not, it is preſumed, be unacceptable;

* The names of the twelve *Imâms* are given by D'HERBELOT, under the head of *Imam*. He has alſo given a brief ſtatement of the tenets of the *Shiya*, under the titles of *Schiah*, *Ali*, and other titles of his valuable, though (as might be expected in ſo voluminous and miſcellaneous a work) ſometimes erroneous and often imperfect compilation. A fuller account of the doctrines and practiſe of the *Shiya* is contained in the 2d vol. of CHARDIN. (*Deſcription de la Religion des Perſans*, in the *Amſterdam* Edition of his *Voyages en Perſe* publiſhed in M.DCC.XI.) But the moſt authentic information upon the juriſprudence of the *Imâmeeyah* ſect, (which, not having been eſtabliſhed, for the adminiſtration of juſtice, in any part of the Company's territories, needs not to be further noticed in this tract,) will be furniſhed by the completion of a work, the firſt volume of which is already printed, and entitled—"A Digeſt of *Mohummudan Law*, according to the tenets of the *Twelve Imams*; "compiled under the ſuperintendence of the late SIR WILLIAM JONES: extended, ſo as to "comprife the whole of the *Imameea* code of juriſprudence, in temporal matters; and "tranſlated, from the original *Arabic*, by order of the Supreme Government of *Bengal*; "with Notes, illuſtrative of the deciſions of other ſects of Mohummudan lawyers, on "many leading and important queſtions. By Captain JOHN BAILLIE, Profeſſor of the "Arabic and Perſian Languages, and of Mohummudan Law, in the College of Fort William."

eſpecially

eſpecially as both the Arabic original and Latin tranſlation, are little known in Ind.*

Origin of the principal *Sonnee* ſects, as ſtated by ABOO'L FURUJ.

"OF the ſects (*Muhib*) which differ upon the branches, or derivative parts of the law, concerning rules of juriſprudence, and caſes of diviſition, four are the moſt celebrated: viz. thoſe of MÁLIK BIN-I ANS; of MOHUMMUD BIN-I IDREES, OO'SHÁFIÎEE; of AHMUD BIN-I HUNBUL; and of ABOO HUNEEFAH NAĊÁN BIN-I THÁBIT. The fundamental grounds of diſquiſition (*Ijtihád*) are alſo four; the ſcripture (*Kitáb*); the tradionary law (*Sŏonnut*); the concurrence of the Prophet's companions (*Ijmá'á*); and analogy, or analogical reaſoning (*Kyás*). For, when any legal queſtion aroſe, reſpecting what was lawful or unlawful, a regular inveſtigation took place, in the following manner. Firſt, they ſearched the Book of Almighty GOD (the *Koran*); and if any clear text were found in it, ſuch was adhered to. But, if not, they ſought for a precept, or example, of the Prophet; and abided by it, if applicable, as deciſive. If none ſuch were diſcovered, they inquired for a concurrent opinion of the *Sahábah*; who, being directed in the right way, are not open to ſuſpicion of miſleading; and therefore, if their ſentiments could be aſcertained, on the point in queſtion, they were deemed concluſive. If not, an ultimate reſort was had to analogy and reaſon; the variety of contingent events being infinite; whereas the texts of the law are finite. It thus appears certain that the exerciſe of reaſon may be proper and neceſſary in legal diſquiſition. IMÁM DÁOOD of *Iſfahán*,

* ABOO'L FURUJ was a Chriſtian, born at *Malathia* in *Aladulia*, or *Armenia minor*, A. C. 1226. But he wrote in *Arabic*, and appears to have been well verſed in the religion and law, as well as in the hiſtory, of *Arabia*. V. POCOCK's *Specimen hiſtoriæ Arabum*, compriſing an extract from the dynaſties of ABOO'L FURUJ, which, GIBBON obſerves, "form a claſſic and "original work on the Arabian antiquities." Publiſhed at Oxford, in 1650. Alſo the complete Latin verſion of the original work, by POCOCK, publiſhed in 1663. GIBBON has added, upon this, however, that "it is more uſeful for the literary than the civil hiſtory of the Eaſt." Cap. LI. n. 13.

however,

however, entirely rejected the exercise of reaſon; whilſt, on the contrary, ABOO HUNEEFAH was ſo much inclined to it, that he frequently preferred it, in manifeſt caſes, to traditions of ſingle authority. But MÁLIK, SHAFIÎEE, and IBN-I HUNBUL, had ſeldom recourſe to analogical argument, whether manifeſt or recondite, when they could apply either a poſitive rule, or a tradition. This gave riſe to their different opinions and judgment; which are recorded in books that treat of their diſputations; yet neither infidelity, or error, is to be charged againſt them on this account."

Which of the four principal ſects prevail in India.

THE four principal juriſts, and founders of ſects, among the *Sŏonees*, who are noticed by ABOO'L FURUJ, have been particularly mentioned in the notes of POCOCK's ſpecimen, already referred to; in the *Bibliotheque* of D'HERBELOT; and in the preliminary diſcourſes of SALE and HAMILTON.* The doctrines of MÁLIK, and IBN-I HUNBUL, are not known to prevail in any part of India. Thoſe of SHÁFIÎEE have a limited prevalence on the ſea coaſt of the peninſula; and are underſtood to obtain among the *Malays*, and other

* Their names, at length, are — 1. ABOO HUNEEFAH NAÔMÁN BIN-I THÁBIT; or, as pronounced in India, SÁBIT. 2. ABOO ÂBDŎŎLLAH MÁLIK BIN-I-ANS, or, as otherwiſe read, ANUS. 3. ABOO ÂBDŎŎLLAH MOHUMMUD IBN-I-IDREES ŏŏ'SHÁFIÎEE, or a deſcendant from SHÁFIÎ. 4. ABOO ABDŎŎLLAH AHMUD IBN-I HUNBUL. The firſt is commonly called ABOO HUNEEFAH, meaning the father of HUNEEFAH, and therefore is improperly cited, in the tranſlation of the *Hidáyah*, by the name of HUNEEFAH only; which, moreover is a feminine appellation, and was the name of the ſecond wife of ÂLEE. (Vide Tit. HANIFAH, in the Bib. of D'HERBELOT.) He was born at *Koofah*, about A. H. 80; (ſome ſay ten, and others twenty-one, years earlier;) was inſtructed in the traditions, by IMÁM JÂFUR-I SÁDIK, the ſixth *Imám*; who, as an authority for the precepts and actions of MOHUMMUD, is eſteemed by the *Sŏonees*, as well as by the *Shiyâ*; (not the *Sheeah* Doctor, ABOO JÂFUR, mentioned in a former note; as erroneouſly ſtated in HAMILTON's Preliminary Diſcourſe, p. xxiii. Vid. Tit. *Giafar* in the *Bib. Or.*) and died in priſon, at *Bughdád*, in the *Khiláfut* of MUNSOOR, A. H. 150. The founder of the ſecond ſect is known by his proper name MÁLIK. He was born at *Mudeenah*, between the years 90 and 95 of the *Hijrah*; and died, at the ſame place, in a ſtate of religious retirement, during the reign of HÁROON ŏŏ'RUSHEED, A. H. 179. The patronymic, *Shafi'jee*, uſually diſtinguiſhes the third leader; who was born at *Gaza* or *Aſcalon*, in *Paleſtine*; in the hundred and fiftieth year of the *Hijrah*; and died at *Cairo*, (where the famous SALÁH ŏŏ DEEN, ſome centuries afterwards, founded a College, in honour of his memory and doctrines,) A. H. 204. The laſt chief, AHMUD, is more generally called, from his father, IBN-I HUNBUL. He was born at *Bughdád*, or according to ſome at *Murv*, or *Muroo*, in *Kharáſán*, A. H. 164; and died at *Bughdád*, where he attended the lecture of SHÁFIÎEE, A. H. 241.

Mooſulman

Moſulman inhabitants of the Eaſtern Iſlands. But the authority of ABOO HUNEEFAH, and his two diſciples, ABOO YOOSUF, and IMÁM MOHUMMUD, is paramount, and excluſively governs judicial deciſions, in *Bengal* and *Hindooſtan*, as well as at *Conſtantinople*, and other ſeats of Mohummudan dominion in *Turkey* and *Tartary*. It will therefore be ſufficient to ſtate the ſyſtem of ABOO HUNEEFAH, with the illuſtrations, and amendments, of ABOO YOOSUF and IMÁM MOHUMMUD *; noticing, after the manner of the *Hidáyah*, any particular opinions of the other orthodox ſects, upon points of importance, which may appear to require it.

Rule of deciſion when there is a difference of opinion between

IT has been remarked by Sir W. JONES, in his preface to the *Sirájeeyah*, † "that although ABOO HANEEFAH be the acknowledged

* ABOO YOOSUF YÁKOOB BIN-I IBRÁHEEM ŏŭL KOOFEE, was born at *Kooſah*, A. H. 113; and after finiſhing his ſtudies under ABOO HUNEEFAH, was appointed *Kázee* of *Bughdád* by the *Khuleefah*, HÁDEE. He was afterwards, in the reign of HÁROON oo' RUSHEED, made *Kázee ool Kŏŏzát*, or chief judge; and retained that high ſtation, (which is ſaid to have been firſt inſtituted for him) until his death A. H. 182.—ABOO ÂBDŏŏLLAH MOHUMMUD BIN-I HUSUN oo' SHÝBÁNEE, (of the tribe of *Shýbán*) who is uſually called IMÁM MOHUMMUD, was born at *Wáſit*, in *Arabian Irák*, A. H. 132. He was a fellow pupil with ABOO YOOSUF, under ABOO HUNEEFAH; and on the death of the latter, continued his ſtudies under the former. He is alſo ſaid to have received inſtruction from MÁLIK. He was appointed by HÁROON oo' RUSHEED to adminiſter juſtice in *Irák-i ajum* or *Perſian Irák*; and died at *Ry*, the former capital of that province, A. H. 179; or, according to the *Roúzut oo'ſyáheen*, an eſteemed hiſtory from the commencement to the 759th year of the *Hijrah*, by YAFIEE, A. H. 189. (See further particulars reſpecting ABOO YOOSUF and IMÁM MOHUMMUD, in HAMILTON's Preliminary Diſcourſe.) ZOOFUR BIN-I HŏŏZEL, and HUSUN BIN-I ZIYÁD, (the former of whom held the appointment of chief magiſtrate at *Buſrah*, where he died A. H. 158) were alſo two diſtinguiſhed contemporaries, and ſcholars, of ABOO HUNEEFAH; and are ſometimes quoted as authorities for his doctrines; eſpecially when the two principal diſciples are ſilent.

† A work of authority upon the Mohummudan law of inheritance, tranſlated and publiſhed, with a commentary, by Sir W. JONES, in the year 1792. This is the only part of the Moſulman Digeſt, undertaken by the venerable judge in 1788, which his various avocations and ſtudies allowed him to complete. He deemed it worthy of being exhibited entire, as containing the "Inſtitutes of Arabian law on the important title mentioned by the Britiſh legiſlature (in "the Statute 21. GEORGE III. Chapter LXX) of inheritance and ſucceſſion to lands, rents, "and goods." And it is of particular value, to the juriſprudence of Britiſh India, as the *Hidáyah*, tranſlated by Mr. HAMILTON, does not include the law of inheritance. It has not been aſcertained when the author of the original treatiſe lived. But the *Kuſhf oo' Zunoon*, (or *dhunoon*, as pronounced in *Arabia*) the bibliographical work of HÁJEE KHULFAH, which furniſhed materials for a conſiderable part of the *Bibliotheque Orientale*, (*Vid.* GALAND's preface, p. xiv. Ed. M.DCC.LXXVI.) mentions it, under the title of *Furáyid oo' Sujáwundee*

ABOO HUNEEFAH, and his two disciples, ABOO YOOSUF and IMAM MOHUMMUD.

" knowledged head of the prevailing sect, and has given his " name to it, yet so great veneration is shown to ABOO " YOOSUF, and the lawyer MOHUMMUD, that, when they both " dissent from their master, the Moosulman judge is at liber- " ty to adopt either of the two decisions, which may seem " to him the more consonant to reason and founded on the " better authority." This remark corresponds with the received opinion of present lawyers; and is sanctioned, for the most part, by a passage to the following effect in the *Hummádeeyah*.* " *Futwás* (law decisions, or opinions) are " given primarily, according to the doctrine of ABOO HU- " NEEFAH; next according to ABOO YOOSUF; next according " to IMÁM MOHUMMUD; next according to ZOOFUR; and " then according to HUSUN BIN-I ZIYÁD. It is said, that if " ABOO HUNEEFAH be of one opinion, and his two disciples " of another, the *Mŏŏftee* is at liberty to chuse either: but the " preceding rule must be observed, when the *Mŏŏftee* is not " a scientific jurist; (and therefore not competent to judge of " the opposite opinions.) This is copied from the *Kŏŏnyah*.† " In judicial decrees however a preference is given to the " doctrine of ABOO YOOSUF (who was an eminent judge); for

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in the following terms; together with the date of the commentary of SÝYUD SHUREEF; the substance of which is given by Sir W. JONES, with that of a recent Persian comment, by MOULAVEE MOHUMMUD KÁSIM, who was employed by Mr. HASTINGS to translate, from the *Arabic* into *Persian*, both the *Sirájeeyah* and the *Shureefeeyah*. " The *Furáyid-oo-* " *Sujáwundee*, composed by IMÁM SIRÁJ OO' DEEN, MAHMOOD BIN-I ÂBD ŏŏ' RUSHEED, of " *Sujáwund*, is commonly called the *Furáeez-i Sirajeeyah*. It is held in high estimation " and in general use. Many of the learned have written commentaries upon it, to the " number of forty; the best of which is the comment of SÝYUD OO' SHUREEF ÂLEE " BIN-I MOHUMMUD, of *Joorjân*; finished, at *Sumurkund*, in the year (of the *Hijrah*) " 804. This commentary is of the first authority, and universally received. Several " Scholiasts, of erudition, have given annotations upon it."

* A collection of legal expositions, by ABOŏ'L FUTHA, ROKN ŏŏ DEEN IBN-I HOSÁM, *Mŏŏftee* of *Nágór*, in the *Dukhun*; and dedicated to his teacher, HUMÁD OO' DEEN, AHMUD, chief *Kázee*, of *Nubr wálah*. The time when this work was compiled is not exactly known; but, though of modern date, it is held in considerable estimation. The court of *Nizamut Ádálut* possess a complete copy, obtained for them, with some other law books, by Lord TEIGNMOUTH, from the *Nuwáb Vizeer*, in the year 1797.

† A law tract often quoted in the *Futáwá-i Álumgeeree*, not known to be at present extant; and by whom composed, has not been ascertained.

" IMÁM

" IMÁM *Surukhsée*,* has declared it safe to rely upon ABOO " YOOSUF in judicial matters; and that the learned have " followed him in such cases; though if there be a difference " between the two disciples, whichever agrees with ABOO " HUNEEFAH must be preferred. The joint opinion of the " disciples may also be adopted, though different from that " of ABOO HUNEEFAH, if the difference appear to proceed " from a change of human affairs; (*lit.* a change of men, " and alteration of times;) and modern lawyers are a- " greed, that the doctrine of the two disciples may be taken " for adjudication in all matters of civil justice."

Authority of ABOO HUNEEFAH formerly held absolute, altho' both his disciples might differ from him.

IT appears, however, that the ancient jurists held the authority of ABOO HUNEEFAH to be absolute, although both his disciples might differ from him This is stated, without reservation, in a chapter, " on the order of authorities to " be observed in practice," forming part of the book entitled *Adáb ool Kázee*, or *duties of the Kázee*, in the *Futáwá-i Aálumgeeree*, or collection of law cases, compiled by order of the Emperor ÂÁLUMGEER. The same chapter contains other useful information upon the rules and discretion, under which the Mosulman magistrate is empowered to administer justice; and as it is not long, a literal translation of it is here introduced; omitting only a quotation from the *Mubsoot*, which being nearly a repetition of that given from the *Budayiâ*, the insertion of both appeared superfluous.

Chapter of the *Futawá-i Aálumgeeree*, " on the order of authorities to be observed in practice."

" IT is incumbent upon a *Kázee* (or judge) to give judgment according to the book of GOD; to know what parts of the divine book are in force, and what have been abrogated; to be able to distinguish between the texts which are clear

* SHUMS OOL AIMMAH, ABOO BUKR MOHUMMUD, native of *Surukhs*, in *Khoráśán*. The *Mobeet*, composed by him, will be mentioned in a subsequent note. He also wrote a commentary on the *Jámâ-i Sugheer* of IMAM MOHUMMUD; and a comment upon the *Káfee ool Hákim*, (stated in the *Kushf-od-zunoon* to have been composed by HÁKIM-I SHAHEED, MOHUMMUD; but no longer extant,) which is called *Mubsoót-i Surukhsee*, and often quoted in the *Hidáyah*. He died, at the place of his nativity, A. H. 483.

and

and poſitive; and ſuch as are of doubtful meaning, having obtained a different interpretation from the learned. If no rule be found in the book of GOD, the *Kázee* is to decide according to the traditions from the Prophet. He muſt therefore be competent to diſcriminate thoſe in force from ſuch as have been ſuperſeded; and the ſpurious and invalid, from ſuch as are genuine and authoritative. He muſt be acquainted with thoſe which have obtained ſucceſſive, notorious, or ſingle, verification; and with the character and credit of the reporters of them. Becauſe ſome are celebrated for their knowledge of juriſprudence (*fik-h ó ádálut*); as the four firſt *Khuleefahs*, and the three ÂBDOOLLAHS, (viz. ÂBDOOLLAH IBN-I ÔMUR, ÂBDOOLLAH IBN-I ÂBBAS, and ÂBDOOLLAH IBN-I MUSÔOOD, three of the moſt learned of the companions); whilſt others are eſteemed on account of their long and familiar intercourſe with the Prophet, and their perfect recollection of the traditions; and they are preferred accordingly; the former as the beſt authorities on the general principles of legal ſcience; the latter for the authenticity of particular traditions. If a caſe ariſe to which none of the traditions, derived from the Prophet, may be applicable, let the *Kázee* determine it according to the concurrent opinion of the *Sahábah* (companions), for their concurrence affords a juſt and obligatory rule of conduct. If there be a difference of opinion among the companions, let the *Kázee* compare their reſpective arguments, and follow thoſe which, on inveſtigation, may appear to him preferable; ſuppoſing him qualified to enter into ſuch a diſquiſition. He is not authorized to reject the whole of theſe opinions, and adopt a judgment of his own, altogether novel. For the companions have agreed upon this point, that although they may differ from each other, it is not lawful to inſtitute new doctrines, at variance with the whole of them. KHUSÁF* holds the contrary opinion, that when

* IMÁM ABOO BUKR, AHMUD BIN-I ÔMUR, ſurnamed KHUSÁF, or the farrier. He compoſed

when the companions differ, the *Kázee* may adopt a judgment altogether diſtinct, as their diſſention affords ground for diſquiſition: but what is above ſtated has the beſt foundation. When the companions have agreed upon a point, in which one of their followers *(tábiʃeen)* has diſſented from them; if the diſſenter was not their contemporary, his oppoſition has no weight; and a judgment given conformably thereto, againſt the concurrent opinion of the companions, would be invalid: but if he were contemporary with them, and then expounded the law in oppoſition to their opinions, and they gave ſanction to his diſquiſitions, as in the inſtances of SHORÝH and SHÂBEE,* the concurrence of the companions does not bar the oppoſite expoſition, ſo admitted. With reſpect, however, to expoſitions which have no other authority than part of the *Tábiʃeen*, there are two reports of the ſentiments of ABOO HUNEEFAH. One, that he did not conſider ſuch to be authoritative: and this appears to be the true doctrine. The other, contained in the *Nuwádir*, † ſtates, that if ſome of the followers of the companions have given *Futwas* in their time, and have received from the latter a ſanction to their diſquiſitions; as SHORÝH, HUSUN,‡ and MUSROOK BIN-I AJDÂ,‖ their deci-

poſed the moſt celebrated of the works known under the title of *Adáb ool Kázee*, or duties of the *Kázee*; and is ſtated, in the *Kuſhf oo Zunoon*, to have died A. H. 261. A high encomium is added upon his compoſition; which is ſaid to conſiſt of 120 Chapters, replete with uſeful information. Several learned men have written commentaries upon it, of which the moſt eſteemed is that of IMÁM ÔMUR BIN-I-ÂBD-OOL-ÂZEEZ, commonly called HOOSÂM, the martyr, killed A. H. 536.

* The firſt was *Kázee*, the ſecond *Moſtee*, of *Koofah*, in the firſt century of the *Hijrah*; and they were eſteemed two of the moſt learned men of their age. The former, whoſe name at length, is ABOO OMÝYAH SHORÝH BIN OOL HIRÁS OOL KINDEE, held the ſtation of *Kázee*, at *Koofah*, for ſeventy five years, and died A. H. 78 or 80; after reſigning his office the year before his death. The entire name of the latter is ABOO ÔMUR ÂÁMIR BIN-I SHURÁHEEL OO SHÂBEE, deriving his ſurname from the town of *Shâb*, in *Arabia*. He died A. H. 104.

† Ten different works of this name, (meaning, literally, *rare*, or *ſcarce*) are ſpecified in the *Kuſhf oo Zunoon*; of which one was compoſed by IMÁM MOHUMMUD, the diſciple of ABOO HUNEEFAH; and is probably that here referred to. It is conſidered to be of leſs authority than his five other works, the *Jámá-i ſughheer*, *Jámá-i kubeer*, *Mubſoot*, *Zeeádát*, and *Siyur*, which are well known, and frequently quoted, under the general deſignation of *Záhir oo' Ruwáyát*, the conſpicuous reports.

‡ Vid. *Bib. Or. Tit. Haſſan al Baſri.*

‖ A learned native of *Humádán*, who became a convert to ISLÁM, during the life of MOHUMMUD; and died at *Koofah*, A. H. 62.

ſions

ſions ſhould be obſerved. It is thus written in the *Moheet*.*

" If the concurrent opinion of the companions be not found in any caſe, which their followers may have agreed upon, the *Kázee* muſt be guided by the latter. Should there be a difference in opinion between the followers, let the *Kázee* compare their arguments and adopt the judgment he deem preferable. If, however, none of the authorities referred to be forthcoming, and the *Kázee* be a qualified juriſt; (*Ahil ööl-Ijtihád*, literally, a perſon capable of diſquiſition;) he may conſider in his own mind what is conſonant to the principles of right and juſtice; and applying the reſult, with a pure intention, to the facts and circumſtances of the caſe, let him paſs judgment accordingly. But if he be not a qualified perſon, let him take a legal opinion from others who are verſed in the law, and decide in conformity thereto. He ſhould, in no caſe, give judgment without knowledge of the law; and ſhould never be aſhamed to aſk queſtions for information and advice. It is further requiſite that the *Kázee* attend to two rules: firſt, that when the three *Imáms* (ABOO HUNEEFAH, ABOO YOOSUF, and IMÁM MOHUMMUD) all agree, he is not at liberty to deviate from their joint opinion, upon his own judgment. Secondly, when the three *Imáms* differ, ÂBDÖÖLLAH-IBN-I MOBÁRUK † ſays, the *Kázee's* ſentence is to be given according to the opinion of ABOO HUNEEFAH, becauſe he was one of the

* There are three works of this title; all of which are quoted in the *Futáwá-i Álungeeree*; but the two others are diſtinguiſhed by the addition of *Surukſh e* or *Böörhánee*. The two latter will be mentioned in a ſubſequent note. The *Moheet*, here referred to, is ſuppoſed to have been written by MOÚLÁNÁ RUZEE ööD DEEN of *Nyſhápoor*, who, in the notes prefixed by SYUD AHMUD-I HUMAVEE to an old copy of the *Hidáyah*, purchaſed at *Mukkah*, is ſaid to have compiled the opinions of the followers of ABOO HUNEEFAH, in a regular ſeries; whereas other compilers had blended them. This *Moheet*, however, is not extant in *India*, and is only known by quotations from it.

† One of the pupils of ABOO HUNEEFAH, ſurnamed MUROOZEE from *Muroo*, the place of his nativity. He was held in high veneration for his piety, and his tomb is ſaid to be viſited, at *Hit*, in *Arabian Ïrák*. (Vid. *Bib. Or.* Tit. *Abdalla*). He died at the age of 63, A. H. 181, (*Mirát ööl-álum*).

immediate

immediate followers, and contemporaries, of the companions, and oppoſed them in his *futwas*. So it is in the *Moheet* of SURUKHSEE *

" IF no precedent be found from ABOO HUNEEFAH and his diſciples, and the caſe have been determined by ſubſequent lawyers, the *Kâzee* is to abide by the judgment of the latter; unleſs there be a difference in their deciſions, in which event the preference is left to his diſcretion. IF not even a modern precedent be forth coming, the *Kâzee* may exerciſe his own reaſon and judgment; provided he be converſant with juriſprudence, and have conſulted with ſages of the law. In the commentary of TAHÁVEE †, it is ſtated, that if the *Kâzee* paſs ſentence on his own judgment, in oppoſition to the manifeſt letter of the law *(Nuſs)*, ſuch ſentence is not valid. But if the ſentence be not contrary to the clear letter of the law, and the *Kâzee*, after paſſing it, ſhould change his opinion, his former judgment is, nevertheleſs, valid: though his future adjudications muſt be regulated by his recent opinion. This is the doctrine of the two elders (SHYKÝN, viz. ABOO HUNEEFAH and ABOO YOOSUF,) and IMÁM MOHUMMUD agrees with them, provided the ſecond opinion of the *Kâzee*, in ſuch caſes, be deemed by others preferable to the firſt. It is further ſtated (by TAHÁVEE), that if the ancient juriſts

* The author of this work, which is extant, and held in high eſtimation, is ſtated, in the *Kuſhf oo Zunoon*, to be SHUMS OOL AÍMMAH, ABOO BUKR MOHUMMUD, of *Surukhs*, mentioned in a former note. The *Moheet-i Booorhanee*, compoſed by BOORHÁN OO' DEEN, MAHMOOD BIN-I AHMUD, is alſo noticed in the *Kuſhf oo Zunoon*; but without any particulars of the Author. He is mentioned by D'HERBELOT, under the title of *Sarakhſi*, as having been born at *Surukhs*; and having gone from thence into *Syria*, where he ſuperintended a College at *Aleppo*; and died at *Damaſcus*, A. H. 571. His *Moheet* is known in *India*; and an incomplete copy is poſſeſſed by the court of *Nizámut Âdálut*; but it is leſs eſteemed than that of SHUMS OOL AÍMMAH.

† IMÁM ABOO JÂFUR AHMUD BIN-I MOHUMMUD, of *Tahá* (a town in upper *Egypt*) is one among the numerous commentators of the *Jámâ-i Sugheer* of IMÁM MOHUMMUD. He alſo wrote an abridgement of the doctrines of ABOO HUNEEFAH, and his two diſciples, intitled *Mokhtuſur-i Tahávee*. Both works are often quoted, as authorities; but are not known to be now extant. He is ſtated in the *Kuſhf oo Zunoon*, to have died A. H. 371.

have

have formed different opinions upon any point, and their ſucceſſors have agreed upon the opinion to be preferred; according to the two elders, this agreement does not remove the effect of the former difference; but IMÁM MOHUMMUD thinks it is removed thereby. SHÝKH ŏŏL ISLÁM SHUMS ŏŏL AÍMMAH SURUKHSEE, reports, however, that all the diſciples of ABOO HUNEEFAH agree in opinion upon this point, and that a few of the learned only hold the continuance of the original diſſent, notwithſtanding the ſubſequent agreement. If the lawyers of one age concur in any particular doctrine, and a *Kázee*, in after times, differing in opinion from them, with an upright intention, paſs an oppoſite judgment; ſome hold his ſo doing to be legal, provided there were an original difference among the learned upon the doctrine in queſtion; whilſt others deem it illegal, notwithſtanding ſuch original difference; but all agree upon the illegality of the oppoſite judgment, ſuppoſing no difference of opinion to have been at any time entertained upon the ſubject. In the *Futáwá-i Îtábiyah*:* it is ſtated, that if a *Kázee* take an expoſition of the law from a *Mŏŏftee*, and differ in opinion from the latter, he is to paſs ſentence in the caſe according to his own judgment; provided he be a perſon of underſtanding and knowledge; and that if the ſentence be paſſed againſt his own opinion, in deference to that of the *Mŏŏftee*, it is according to the two diſciples (SÁHIBÝN, viz. ABOO YOOSUF and IMÁM MOHUMMUD) invalid: in like manner as in matters of religious preference on preſumption it is forbidden to act upon the judgment of others: but ABOO HUNEEFAH holds the ſentence to be valid in ſuch caſes, as it is the reſult of legal diſquiſition. Suppoſing the *Kázee* not to have exerciſed his own reaſon on the caſe, at the time of his giving judgment according to the opinion of the *Mŏŏftee*; and that he ſubſequently forms an opinion, at vari-

* The author of this work, ABOO NUSR AHMUD BIN-I-MOHUMMUD ŏŏI ÎTABEE, of *Bokhárá*, is mentioned in the *Kuſhf ŏŏ Zuneon* as having alſo written a commentary on the *Jámâ-i Sugheer* of IMÁM MOHUMMUD. He died A. H. 586.

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ance with that of the *Mŏŏftee*, IMÁM MOHUMMUD ſays, his ſentence is liable to abrogation; but ABOO YOOSUF affirms, it is not affected thereby; in the ſame manner as it would not be affected if the *Kázee* had paſſed ſentence on his own opinion, and had afterwards changed that opinion. The foregoing is copied from the *Tátárkháneeyah*." *

"WHEN there is neither written law, or concurrence of opinions, for the guidance of the *Kázee*, if he be capable of legal diſquiſition, and have formed a deciſive judgment on the caſe, he ſhould carry ſuch judgment into effect by his ſentence, although other ſcientific lawyers may differ in opinion from him; and ſhould not be governed by their ſentiments, in oppoſition to his own: for that which, upon deliberate inveſtigation, appears to be right and juſt, is accepted as ſuch in the ſight of GOD. If however the perſons, who declare an opinion different from that of the *Kázee*, be ſuperior to him in ſcience, and he conſequently adopt their judgment, without queſtioning the grounds of it, from reſpect to their ſuperior knowledge, ABOO HUNEEFAH admits the legality of his proceeding. ABOO YOOSUF and IMÁM MOHUMMUD, on the contrary, do not allow it to be legal, unleſs he ultimately adopt their opinion as the reſult of his own judgment. This, at leaſt, is one report: but another ſays, that the maſter and his two diſciples held, reſpectively, the reverſe of what has been mentioned. If, in any caſe, the *Kázee* be perplexed by oppoſite proofs, let him reflect upon the caſe, and determine as he ſhall judge right; or, for the greater certainty, let him conſult other able lawyers; and if they differ, after weighing their arguments, let him decide, as appears juſt. Should they agree with each other, but differ from his own opinion on the caſe, he is to adhere to the latter until he be convinced it is ill founded, and may give judgment accordingly; but not precipitately, or

* Vid. *Bib. Or. Tit. Tátarkhán.* An imperfect copy of the work referred to, entitled *Fútáwá-i Tátárkhaneeyah*, is in the poſſeſſion of the court of *Nizámut Ádálut*.

until he has duly weighed and examined the whole of the circumſtances and evidence. Let him not fear or heſitate to act upon the reſult of his own judgment, after a full and deliberate examination: but let him beware of a doubtful and conjectural deciſion, without complete inveſtigation, as ſuch will not be approved in the account of his actions to GOD; though, from want of certain information to the contrary, it may paſs as a valid ſentence among men. What has been here ſaid ſuppoſes the *Kázee* to be a *Mŏŏjtahid*, or ſcientifick juriſt, competent, from his talents and learning, to undertake legal diſquiſition. If he be not a perſon ſo qualified, but poſſeſſes a knowledge and full recollection of the points and caſes determined by the eminent lawyers of his perſuaſion, let him give judgment according to the tenets of thoſe in whom he confides; and whom he believes it right to follow. Should he not have a perfect recollection of decided law-points, let him act upon expoſitions of the law, by *Mŏŏftees* of the orthodox doctrine; or if there be only one ſuch *Mŏŏftee* on the ſpot, his ſingle expoſition may be acted upon, without fear of imputed deficiency. It is thus written in the *Budáyi,á*."*

"THE legal meaning of *Ijtihád* is the diligent exerciſe of the mental faculties in ſearch of the thing deſired: and the requiſite qualification of a *Mŏŏjtahid* is a diſcriminative knowledge of what is contained in the book of GOD, and in the traditions from the Prophet, relative to legal rules and ordinances. *(ahkám)*. It is not eſſential that he ſhould alſo know the moral precepts and admonitions included therein. It has been likewiſe declared that a perſon, whoſe general rectitude exceeds

* A commentary on the *Tohfut ŏŏl Fokahá*, of SHÝKH ÔLA CO'DEEN MOHUMMŬD, of *Sumurkund*, by his pupil, ABOO BUKR, BIN-I MUSÔ,OOD, of *Káſhán*, in *Perſian Irák*. The author of the *Kuſhf 'oo Zunoon* ſtates the death of the latter to have been A. H. 587; and adds, the maſter was ſo well pleaſed with the comment of his ſcholar, that he gave in marriage to the latter his daughter FÁTIMAH, who was alſo learned in the ſcience of juriſprudence. The entire name of the commentary is *Budáyi,á' oo'Sunáyi,á ſee turteeb oo' Shuráyi,á*. Both the text and comment are quoted as authorities; but neither is known to be now extant in *India*.

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his deviations from right, may lawfully practiſe *Ijtihád*, or diſquiſition. But the definition above given is accurate: as ſtated in the *Foſool ŏŏl Ímádeeyah*.* The moſt correct account given of a *Mŏŏjtahid* is, that he have a comprehenſive knowledge of the divine book, with the different interpretations thereof; a full acquaintance with the traditions, their gradations, texts, and comments; a right underſtanding, or power of juſt reaſoning; and experience in human affairs and uſages. This is quoted from the *Kaſee*."†

Notice of books of juriſprudence, eſteemed by the followers of ABOO HUNEEFAH; and which govern judicial deciſions in *India*.

HAVING thus ſtated the authorities for the Mohummudan law, and the preference to be obſerved, or diſcretion allowed, when they differ; it may be proper to add a ſhort notice of the books of juriſprudence which are eſteemed by the *Huneeſeeyah* ſect of *Sŏŏnee* lawyers, for practical expoſition of the temporal law; eſpecially ſuch as are extant and govern judicial deciſions in India.

Works of IMAM MOHUMMUD; and commentaries upon them.

ABOO HUNEEFAH himſelf does not appear to have left any work upon juriſprudence.‡ His legal doctrines were recorded and illuſtrated by his diſciples; particularly by IMÁM MO-

* By ABŎŎL FUTŢH MOHUMMUD BIN-I ABOO BUKR, of *Murgheenán*. He is ſtated, in the *Kuſhf oo' Zunoon*, to have compoſed the work quoted, A. H. 651, at the College founded by ÎMAD ŏŎL-MOOLK, in the ſuburbs of *Sumurkund*. It contains forty ſections, on civil tranſactions (*Moâmulát*) only; and being left incomplete at his death, was finiſhed by his ſon, JUMÁL OO' DEEN. A copy is among the Books of the *Nizámut Âdálut*, and it is conſidered a work of authority.

† A commentary on the *Wáfee*, and written by the ſame author IMÁM ABOO'L BURKÁT, ÂBDŎŎLLAH BIN-I AHMUD, commmonly called HAFIZ ŏŏ' DEEN, of *Nuſuf*, who died A. H. 710. He alſo wrote the *Kunz ŏŏ' Dukáyik*, a work of high authority, and extant in India; but eclipſed by its comment the *Buhr-i-Ráyik*, compoſed in the tenth century of the *Hijrah*, by ZYN ŏŎL ÂÁBIDEEN IBN-I NUJEEM, of *Egypt*. (Vid. Tit. *Nagim* of D'HERBELOT, who appears however to have ſtated the year of his death A. H. 670, inſtead of 970; which is mentioned more than once in the *Kuſhf oo' Zunoon*.

‡ Mr. HAMILTON mentions three treatiſes, on theological ſubjects, as written by ABOO HUNEEFAH: viz. the *Máſnad*, *Fiik-al-élm*, and *Moăllim*. Of theſe the *Mŏŏſnud* is deſcribed in the *Kuſhf oo' Zunoon*, as a book of traditions. The work apparently intended as the ſecond, but miſnamed *Fiik-al-étm*, inſtead of *Fil kulám* (on theology), is well known in *India*, by the name of *Fikh-i-Akbur*. The third is unknown. D'HERBELOT, who ſeems to have been Mr. HAMILTON's principal authority, mentions the three works under the title of *Abou-Haniſah*.

HUMMUD;

HUMMUD; whoſe moſt celebrated law-tracts, entitled the *Jamâ i-ſughcer*, *Jamâ-i-kubeer*, *Mubſoot*, *Zeeádát*, and *Siyur*, have been already noticed, as collectively quoted by the title of *Záhir oo' ruweáyát*.* These works are deſcribed in the *Kuſhf-oo' Zunoon* as being of the firſt authority for the opinions of ABOO HUNEEFAH and ABOO YOOSUF,† as well as of IMÁM MOHUMMUD. Various commentaries are alſo ſtated to have been written upon them during the early ages of the Mohummudan era; and ſeveral are quoted in the *Futawá-i-Âalumgeeree*, compiled in the reign of AÚRUNGZÉB.‡ But neither the texts, or comments, are now known to be in India, except an imperfect copy of the commentary of KÁZEE KHÁN, on the *Jámâ-i-ſughcer*, which was obtained from the library of the Nuwab

* Mr. HAMILTON (in his Preleminary Diſcourſe, p. 36,) has inadvertently ſtated the *Jamâ-i-kubeer* to be a collection of traditions, called alſo the *Jamâ-i-ſaheeh*, by YEESOO MOHUMMUD BIN YESOO AL TERMAZI. The apparent origin of this miſtake has been pointed out in a former note. He further remarks that the author of the *Jamâ-i-ſughcer* is uncertain. But independently of numerous other authorities, IMÁM MOHUMMUD is expreſsly cited in the *Hidáyah* as the author of both works, and of the *Mubſoot*. (See Vol. I. of the tranſlation, p. 153). Mr. HAMILTON has been led into another error, by ſuppoſing the *Mubſoot*, quoted in the *Hidáyah*, to have been written by FUKR-OOL ISLÁM BUZDUVEE; whereas, of the two *Mubſoot* cited by the author of the *Hidáyah*, one is the compoſition of IMÁM MOHUMMUD, above noticed; and the other was compoſed by SHUMS OOL AIMMAH SURUKHSEE, as obſerved in a preceding note.

† The only work known to have been compoſed by ABOO YOOSUF is an *Adub ool Kázee*; and the reputation of this has been ſuperſeded by the celebrity of KHUSAF's tract of the ſame title, already mentioned. He is ſaid, however, to have furniſhed his pupil, IMÁM MOHUMMUD, with notes (*amálee*) for a conſiderable part of his compoſitions; particularly for the *Jámâ-i-ſughcer*.

‡ The principal commentators of the *Jámâ-i ſughcer* are SHUMS OOL AIMMAH SURUKHSEE; ABOO BUKR AHMUD RÁZEE, commonly called JUSSÁS, (the plaſterer;) ABOO JÂFUR AHMUD TAHÁVEE; FUKR OOL ISLÁM ÂLEE BUZDUVEE; ABOO NUSUR AHMUD OOL ÎTÁBEE, of *Bokhárá*; ABOO'L LÝS NUSUR, of *Sumurkund*; ABOO NUSUR AHMUD, ISBEEJÁBEE; HUSUN BIN-I-MUNSOOR, of *Oúzjund*, better known by the appellation of KÁZEE KHAN; TÁJ OO' DEEN ÂBD OOL GHUFUR KURDUREE; ZUHEER OO' DEEN AHMUD TUMURTÁSHEE; and KÁZEE MUSÁOOD, of *Yuzd*; and ABOO SÂEED MOOTUHUR, of the ſame city; whoſe commentary is quoted by the title of *Tuhzeeb*. The ſeven perſons firſt mentioned have alſo written comments on the *Jámâ-i-kubeer*; beſides KÁZEE ABOO ZÝD ÂBDOOLLAH, of *Duboos*; BOORHÁN OO' DEEN MAHMOOD, author of the *Muheet-i-Boorhánee*; BOORHÁN OO' DEEN ÂLEE, author of the *Hidáyah*; SHUMS OOL AIMMAH MOHUMMUD, called *Hulwáee* (the confectioner); IBN-I UBDUK JOORJÁNEE; and JUMÁL OO' DEEN MAHMOOD, of *Bokhárá*, whoſe common deſignation is HUSEEREE (the mat-maker); and whoſe ſecond commentary is often quoted by the name of *Tukreer*. The *Tukreer* and *Dooiur* are alſo known comments on the work in queſtion; the former by ABOO'L ÂBBÁS AHMUD; the latter by NÁSIR OO' DEEN MOHUMMUD, of *Damaſcus*.

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of *Oúdh;* and is in the poſſeſſion of the *Nizámut Âdálut.* Nor is there a treatiſe on the Moſulman law, written during the four firſt centuries of the *Hijrah,* at preſent, in the poſſeſſion of any perſon, from whom inquiry could be made upon the ſubject, at *Calcutta.**

The *Mokhtuſur,* or compendium, of KUDOOREE; and commentaries upon it.

THE oldeſt work on juriſprudence in the poſſeſſion of the law officers of the *Nizámut Âdálut,* and other learned Moſulman lawyers, in *Calcutta,* is the *Mokhtuſur ŏŏl Kudooree,* a compendium, or general law-tract, compoſed by IMÁM ABŎŎ'L HOSÉN AHMUD, of *Kudoor,* a quarter of *Bughdád,* who died A. H. 428. It is often referred to in the *Hidáyah,* and deſcribed in the *Kuſhf oo' Zunoon* as a book of authority in general uſe, and held in the higheſt eſtimation. It is ſaid to contain twelve thouſand caſes; and has been illuſtrated in numerous commentaries; among which ſeveral are quoted in the *Futáwá-i-Âálumgeeree;* but are not now known to be extant in *Hindooſtan* †.

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* It does not appear that any work on juriſprudence was publiſhed during the firſt century of the *Hijrah:* or that any was written on the doctrines of ABOO HUNEEFAH, during the ſecond century, except the treatiſes, which have been noticed, of his two diſciples ABOO YOOSUF, and IMÁM MOHUMMUD. In the third and fourth centuries, beſides commentaries on the works of the latter, (which as fundamental authorities, are denominated *Oſool,* or *Original*) the following law-tracts are ſtated to have been compoſed; and are briefly deſcribed in the *Kuſhf oo' Zunoon.* An *Adub ŏŏl Kázee* and *Nuwádir,* by MOHUMMUD BIN-I-SUMÁAH, who died A. H. 233. Another treatiſe, of the former title, by ABOO HÁZIM ÂBD ŏŏL HUMEED, who died in 292. Several treatiſes of the latter title, by IBN-I RŎŎSTUM, HISHÁM, and others. Alſo books of both titles, and a compendium of the law, entitled *Mukhtuſur-i Tahávee,* by ABOO JÂFUR AHMUD of *Tahá,* in Egypt, who died A. H. 371; and who ſeems to be the author erroneouſly cited by the name of ABOO FAKA, in Mr. HAMILTON's Prel. Dis. p. 38. Another compendium, entitled *Mokhtuſur-i Kurkhee,* by ABŎŎ'L HOSÉN ÂBDŎŎLLAH, of *Kurkh* (a ward in the city of *Bughdád*) who died A. H. 340. And a *Nuwádir,* with two other books, entitled *Oûzoon* and *Nuwâzil,* by ABŎŎ'L LÝS NUSUR, of *Sumurkund.*

† The titles and authors of the principal commentaries are as follow. The *Siráj-i Wuhháj,* and *Jŏŏhurah-i-nŋyirah* (the latter abridged from the former) by ABOO BUKR BIN-I-ÂLEE, commonly called *Hudádee* (the blackſmith.) AHMUD BIN-I-MOHUMMUD alſo made an abridgement of the *Sir'j-i-Wuhháj,* which is quoted by the title of *Buhur-i-Zákhir.* The *Moŏltumus ŏŏl ikhwán* by ABŎŎ'L MÂÁLEE, of *Ghuzná.* The *Kiſáyah,* by SHUMS ŏŏL AIMMAH ISMÂEEL, of *Bŋhuk.* The *Biyán,* by MOHUMMUD BIN-I-RUSOOL, of *Toúkát.* The *Lóbáb* by JŬLÁL ABOO SÂEED MŎŎTUHUR, of *Buzdah.* The *Yunábeeâ* by BUDR OO' DEEN MOHUM-

MUD,

Two deſcriptions of books in uſe for expounding the Mohummudan law; elementary and practical.

THE other Books in actual uſe for expounding the Mohummudan law are of two deſcriptions. The firſt conſiſt of texts and comments, which, in a ſcientific method, ſtate the elements and principles of the law; eſtabliſh them by proofs and reaſoning; and illuſtrate the application of them by ſelect caſes, real or ſuppoſed; ſuch as the *Hidáyah*, *Kunz oo' dukáyik*, *Vikáyah*, *Nikáyah*, and *Aſhbah o' Nuzáyir*, with their reſpective commentaries. The ſecond deſcription is commonly, but not always, diſtinguiſhed by the title of *Futáwá*; and is, for the moſt part, a collection of law-caſes, arranged under proper heads, with a ſhort recital of facts and circumſtances, without arguments, and with authorities only for the caſes as quoted; being intended chiefly for practical purpoſes; whereas the elementary works firſt mentioned are more calculated for ſtudy and inſtruction. The *Futáwá-i Kázee Khán* by FUKR OO' DEEN HUSUN, of *Oúzjund*, in *Furghaná*, who was contemporary with the author of the *Hidáyah*, and whoſe collection is eſteemed of equal authority with that celebrated work, muſt, in ſome meaſure, be excepted from the above remark; as it illuſtrates many caſes by the proofs and reaſoning upon which the deciſion of them is founded.*

Futáwá of KAZEE KHAN.

Other *Futáwá* extant in India.

THE other *Futáwá* extant in *India*, beſides thoſe already mentioned in the preceding pages and notes, are the *Khuzánut*

MUD, of *Uſhbeeleeah*. The *Kholáſut oo' dulá'eel*, by HOSÁM OO' DEEN ÂLEE, of *Mukkah*. The laſt mentioned commentary is highly praiſed, for its utility, in the *Kuſhf oo' Zunoon*, and is ſtated to have been further improved by the annotations of ÎBN-I SUBEEH OO' DEEN ÔSMÁN, a native of *Tartary*. Mr. HAMILTON, (in his Prel. Diſc. p. 36, 37,) has erroneouſly mentioned the *commentary* of KUDOOREE, as quoted in the *Hidáyah*, inſtead of his *Mukhtuſur*. He appears to have made a further miſtake in ſtating the commentary of KUDOOREE to be upon the *Adub ool Kázee* of ABOO YOOSUF, whereas no comment of that work is noticed in the *Kuſhf oo' Zunoon*; but *Kudooree* is ſpecified as one of the commentators of the *Adub ool Kázee* of KHUSÁF, mentioned in a preceding note.

* A complete and accurate copy of the *Futáwá-i Kázee Khán*, ſuppoſed to have formerly belonged to the royal library, is among the books of the *Nizámut Âdálut*, obtained from *Lukhnow*. The author of the *Kuſhf oo' Zunoon* and the preſent *Kázee ool Kozát*, concur in extolling this work, as replete with caſes of common occurrence, and conſequently of particular utility for practical reference. A digeſt *(Moruttub)* of the caſes recited in it is alſo mentioned in the *Kuſhf oo' Zunoon*, as made in the ſeventh century of the *Hijrah*, by a learned Syrian, named MOHUMMUD BIN-I-MOOSTUFA ÁFUNDEE, and entitled *Wuhhájo' Shureeát*.

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ŏŏl Mŏŏſtiẹen, *Futáwá-i-Buzaziyah*, *Futáwá-i-Nukſhbundiyah*, *Mun'h ŏŏl ghufar*, and *Mokhtár ŏŏl Futáwá*, by unknown authors; the *Fŏŏſool-i-Iſtuurooſhee*, by MOHUMMUD BIN-I MAHMOOD, who compiled it in the 625th year of the *Hijrah*;* the *Futáwá-i Ibráheemſhahiyah*, by SHAHÁB ŏŏ' DEEN AHMUD, a native of *Hindooſtan*, who compoſed it for SŏŏLTÁN IBRÁHEEM SHÁH, at *Joúnpoor*, in the 9th century of the *Hjrah*;† and the *Futáwá-i-Âálumgeeree*, compiled at *Dchly*, by order of the Emperor AÚRUNGZÉB (alſo called ÂÁLUMGEER) in the 11th year of his reign, correſponding with A. H. 1067.

The *Hidáyah* is ſo well known, from the Engliſh verſion of it, made by Mr. CHARLES HAMILTON, and publiſhed in the year 1791, that it will be unneceſſary to ſay much of it. The *Kázee ŏŏl Kŏŏzát*, in his catalogue of books already adverted to, deſcribes it in the following terms. "The *Hidáyah* is a com- "mentary upon the *Bidáyut ŏŏl Mŏŏbtudee*, and both the text "and comment were compoſed by SHÝKH BŏŏRHÁN ŏŏ' DEEN "ÂLEE, ſon of ABOO BUKR, of *Murgheenán*, who lived to the "age of ſixty-two; and, after employing thirteen years in the "compoſition of the latter work, departed from this world "A. H. 593. The general arrangement, and diviſions of it, "are adopted from the *Jamâ i-Sugheer* of IMÁM MOHUMMUD. "It is celebrated amongſt the learned for its ſelection of law "caſes, and connection of them with the proofs and arguments "by which they have been determined. Wherefore in every

The *Hidáyah*, and its commentaries.

* The court of *Nizámut Âdálut* have a complete copy of this compilation, preſented to them, with ſix other law books purchaſed at *Lukhnow*, by the *Káz e ŏŏl Kŏŏzát*, MOHUMMUD NUJM ŏŏ' DEEN. It conſiſts of thirty ſections, upon *Mŏŏâmulát* only: like the *Fŏŏſool ŏŏl Imádeeyah*, beforementioned. The contents of both were arranged and incorporated in a collection, entitled *Jámâ ŏŏl Fŏŏſoolýn*, by BUDR ŏŏ' DEEN MAHMOOD; better known by the name of ÎBNI-KÁZEE-I-SUMÁWUNAH, who died A. H. 823. The author of the *Kúſhf oo' Zunoon* ſtates this work to be in great eſtimation with the learned, as a civil digeſt; but, though often quoted as an authority, it is not known to be at preſent in *India*.

† IBRÁHEEM SHAH reigned at *Joúnpoor* (during the confuſion of the Empire of *Dehly*, conſequent to the invaſion of TYMOOR) for forty years, and died A. H. 844. The court of *Nizámut Âdálut* poſſeſs an entire copy of the work referred to; but it is a mixed collection, and not deemed authoritative.

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" age it has been eſteemed by lawyers; many of whom have " written comments and annotations upon it." It is ſpoken of in nearly the ſame language, by the author of the *Kuſhf-oo'-Zunoon*, who adds " it is a rule obſerved by the compoſer of " this work to ſtate firſt the opinions and arguments of the " two diſciples (ABOO YOOSUF and IMÁM MOHUMMUD); after- " wards the doctrine of the great IMÁM (ABOO HUNEEFAH); " and then to expatiate on the proofs adduced by the latter, in " ſuch manner as to refute any oppoſite reaſoning on the part " of the diſciples. Whenever he deviates from this rule it " may be inferred that he inclines to the opinion of ABOO " YOOSUF and IMÁM MOHUMMUD. It is alſo his practiſe " to illuſtrate the caſes ſpecified in the *Jamâ-i-Sugheer*, " and by KUDOOREE: intending the latter, whenever he " uſes the expreſſion *he has ſaid in the book*. In praiſe of " the *Hidáyah*, it has been declared, like the *Korán*, to have " ſuperſeded all previous books on the law; that all perſons " ſhould remember the rules preſcribed in it; and that it " ſhould be followed as a guide through life." This eulogium on the *Hidáyah* is confirmed in a paper written by MOÚLAVEE MOHUMMUD RÁSHID, one of the *Mŏŏftees* of the Supreme Court of Judicature and Courts of *Sudr Deewánee* and *Nizamut Âdálut*, as well as one of the moſt learned Moſulmans in India; who remarks on the text, and ſome of the principal comments, to the following effect. " No text or commentary, " now extant, can be compared with the *Hidáyah* as a " digeſt of approved law caſes, illuſtrated by the proofs and " arguments which eſtabliſh them. It is therefore, with its " comments, fit to be the ſtandard of legal deciſion in the pre- " ſent times. Many commentaries have been written upon " it: but four only, the *Niháyah*, *Ínáyah*, *Kifáyah*, and *Fut'h ŏŏl* " *Kudeer*, are forthcoming in *Bengal*. The *Niháyah* was firſt " compoſed: and has ſuperior credit as being the original from " which the others have borrowed. But the author of the " *Ínáyah* has merited eſteem by his ſtudious analyſis; and

" interpretation

" interpretation of the letter and meaning of the *Hidáyah*. The " *Kifáyah* alſo deſerves commendation, from its conciſe ſtate- " ment of the ſubſtance of other commentaries, as well as " from ſome additions to them. And the *Futh ŏŏl Kudeer* is " preferable to the whole, as an ample collection of caſes, " (rendering it equal in this reſpect to a *Futáwá*) expreſſed with ſuitable brevity of language.*

The *Kunz ŏŏ' dukáyik* has been already mentioned, as compoſed by HÁFIZ ŏŏ' DEEN, author of the *Káfee* and *Wáfee*. It is a ſhort general treatiſe of law, uſed in Moſulman Colleges, as an elementary book of inſtruction; but ſuperſeded, as a book of reference for legal expoſition, by its commentaries; of which the following are extant in India. The *Tubieen ŏŏl hukáyik*, by FUKR ŏŏ' DEEN ABOO MOHUMMUD ÔSMÁN of *Zylá*, who died A. H. 743. His comment is valued by the followers of

The *Kunz oo' dukáyik*, and its commentaries.

* The *Nihâyah* was compoſed by HOSÁM OO'DEEN HOSÉN IBNI ÂLEE, ſaid to have been a pupil of BŎŎRHÁN OO'DEEN author of the *Hidâyah*. The latter having, from ſome unknown cauſe, omitted the law of inheritance, it has been added by the commentator. But this part of the *Nihâyah* does not appear to have obtained equal celebrity with the *Furá, eez-i-ſirajeeyah* mentioned in a former note. The *Kuſhf ŏŏ' Zunoon* notices two commentaries of the title of *Ĩnáyah*; the firſt of which was commenced by ABŎŎ'L ÂBÁS AHMUD, a *Kázee* in *Egypt*, who died A. H. 710; and was completed in the ſucceeding century of the *Hijrah* by KÁZEE SÂEED ŏŏ'DEEN, of *Dubur*. The ſecond, which is that referred to as extant in *India*, was compoſed by SHÝKH AKMUL ŏŏ' DEEN MOHUMMUD, who died A. H. 786; IMÂM ŏŏ' DEEN AMEER KÁTIB BIN-I AMEER ÔMUR, who had previouſly written another commentary entitled *Ghâyutŏŏl biyán*, after employing himſelf for twenty ſeven years at *Cairo*, and other places, to render his ſecond work more complete, finiſhed the *Kifáyah*, at *Damaſcus*, in the 747th year of the *Hijrah*. The *Futh ŏŏl Kudeer* is ſtated to have been commenced by its author KUMÁL ŏŏ' DEEN MOHUMMUD of *Seewás*, commonly called ÎBN-I-HOMÁM, in the 29th year of the *Hijrah*; and to have occupied a conſiderable part of the remaining period of his life, which was terminated in 861. Other commentaries upon the *Hidáyah* are mentioned in the *Kuſhf oo' Zunoon*; but as they are not procurable in *India*, it will be ſufficient to notice the *Furwáeed*, by HUMEED ŏŏ'DEEN ÂLEE, of *Bokhárá*, who died A. H. 667; and is ſuppoſed by ſome to have been the firſt commentator; but his tract, being extremely brief, has been ſuperſeded by the ſubſequent comments; the MIÂRÁJ ŏŏ' DIRÁYUT, by KUWÁM ŏŏ' DEEN MOHUMMUD, alſo of *Bokhárá*, who died A. H. 747; and whoſe commentary is quoted in the *Álumgeeree*: And the *Ôdah* by KUMÁL ŏŏ'DEEN MOHUMMUD, alſo quoted; though it is deſcribed as rather an abſtract, than a comment; being a methodical collection of the law caſes contained in the *Hidáyah*, without the arguments ſtated in proof of them. The *Nihâyah, ŏŏl Kifáyah*, by TÁJ ŏŏ' SHUREEYUT ÔMUR, is alſo mentioned in the *Kuſhf ŏŏ' Zunoon* as a commentary on the *Hidáyah*; but the *Kázee ŏŏl Kŏŏzát*, in deſcribing an imperfect copy of it, belonging to the *Nizámut Ádálut*, terms it a *Háſhee ah*, or marginal note book. An incomplete copy of the *Kifáyah* is alſo among the law books of that court.

ABOO HUNEEFAH, as containing a complete refutation of the oppoſite doctrine of SHAFIÎEE. The *Buhr ŏŏ' rayik*, by the learned ZÝN ŏŏL ÂÁBIDEEN ÎBN-I NUJEEM of *Egypt*, left incomplete, at his death, A. H. 970; and unequally finiſhed by his Brother SIRÁJ ŏŏ' DEEN ÔMUR, who alſo wrote a commentary entitled the *Nuhr-i-ſáyik*, but of inferior merit to that of ZÝN ŏŏL ÂÁBIDEEN; which is held in the utmoſt eſtimation; and is ſpoken of in the *Kuſhf ŏŏ' Zunoon* as equalled only by the *Futh ŏŏl Kudeer*, ÎBN-I HOMÁM's commentary on the *Hidáyah*. The *Mutlub-i-ſáyik*, or, as more generally called *Âyuce*, by BUDR ŏŏ' DEEN MOHUMMUD ÂÝNEE, of *Dubur* in *Arabia*. This commentary is alſo eſteemed, as containing an ample collection of law caſes: and though ſurpaſſed, in this reſpect, by the *Buhr-i-ráyik*, it has the advantage of having been brought to a concluſion by the author; whoſe erudition obtained him the title of *Ûlámah*, in common with ZÝN ŏŏL ÂÁBIDEEN.*

The *Vikáyah*, and commentaries.

THE text of the *Vikáyah*, compoſed in the 7th century of the *Hijrah* by BOORHÁN ŏŏ' SHUREEÛT MAHMOOD, ſon of the firſt *Sudr ŏŏ' Shureeût*, like that of the *Kunz ŏŏ' Dukáyik*, has been ſuperſeded, for legal conſultation, by its more extenſive commentaries; eſpecially by that of the ſecond *Sudr ŏŏ' Shureeût*, ÔBÝD ŏŏLLAH BIN-I-MUSÂOOD, who died A. H. 750; diſtinguiſhed by the title of *Shurh-i-Vikáyah*; and combining, with the original treatiſe, an ample comment in illuſtration of it. But both are uſed in Moſulman Colleges, for inſtruction in the ſcience of law, preparatory to the ſtudy of the *Hidáyah*; upon which the *Vikáyah* is founded; being, as its title at length im-

* Another commentary on the *Kunz ŏŏ dukáyik*, entitled *Maâdun*, is known in *India*. But the name of the author has not been aſcertained. The *Eezáh* by SHÝKH YAHÝÁ, and *Rumz ŏŏl Hukáyik* by KÁZEE BUDR ŏŏ' DEEN MAHMOOD, are alſo noticed, with the names of ſome other commentators, in the *Kuſhf ŏŏ' Zuncon*; but they are not celebrated, or quoted as authorities. The court of *Nizamut Ádálut* poſſeſs an incomplete copy of the *Buhr-i-ráyik*; on which the *Kázee ŏŏl Kŏzát* remarks (in his catalogue) that "it comprizes a "compilation of caſes, general and particular; with the uſeful reſult of the author's re- "ſearches upon a variety of legal queſtions; and is received as authentic by the followers "of ABOO HUNEEFAH in every city of *Iſlám*.

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ports, (*Vikáyut ŏŏ' riwáyah, ſee Muſáɛeel il Hidáyah;*) the *Cuſtos*, guardian, or preſerver, of the reports of caſes in the *Hidáyah*. Other commentaries are mentioned in the *Kuſhf ŏŏ' Zunoon*; but they are not known to be extant in India; or quoted as authorities*.

The *Nikáyah*, and comments.

THE *Nikáyah* was abridged from the *Vikáyah* by the ſecond SUDR ŏŏ' SHUREEÛT, already mentioned as the principal commentator on the *Vikáyah*. It is alſo called *Mokhtuſur-i-Vikáyah*, and uſed as a book of inſtruction; the rules and caſes contained in it being committed to memory by the Student. But its utility, for legal reference, is ſuperſeded by its commentaries; of which three are extant, compoſed by ABDŏŏ'L MUKÁRIM BIN-I ÂBDŏŏLLAH, A. H. 907; by ÂBDŏŏL ÂLEE, BIN-I-MOHUMMUD BIRJINDEE, in the year 935; and by SHUMS ŏŏ' DEEN MOHUMMUD, of *Khoriſtán*, in 941. The whole of theſe comments are held in eſteem; but the latter, entitled *Jamî ŏŏ' rumooz*, is the moſt copious †.

The *Aſhbáh*

THE *Aſhbáh ó Nuzáyir* is an elementary treatiſe, compoſed in

* Numerous *Huwáſhee*, or books of annotation, have alſo been written on the text and commentaries; of which the moſt celebrated is the *Háſheeah* of YOOSUF BIN-I-JONÝD, commonly called A'KKEE CHULPEE. This work, entitled *Zukheerut ŏŏl Ŏkba* is in the poſſeſſion of the court of *Nizámut Ádálut*, who have alſo a correct and complete copy of the *Shurh-i-Vikáyah*. It may be uſeful to add that a Perſian tranſlation of the latter has been made by a perſon named ÂED-ŏŏL HUK SUJÁWUL, of *Surhind*; who, in his preface, ſtates it to have been completed A. H. 1076; during the reign of AÚRUNGZÉB. A copy of this verſion is in my poſſeſſion. The language is not elegant; but it bears the character of accuracy; and with a careful reviſion, it may deſerve publication. In bulk it does not much exceed a fourth of the Perſian Verſion of the *Hidáyah*; made by the former chief *Kázee*, GHOLÁM YUHYÁ KHÁN, and his learned aſſociates, employed for that purpoſe under the patronage of Mr. HASTINGS; a reviſed edition of which, under the ſuperintendence of MOULAVEE MOHUMMUD RÁSHID, is now printing, at my ſuggeſtion, by order of Government; and beſides facilitating the ſtudy of the *Arabic* text, will tend to explain and correct the Engliſh tranſlation; which, though on the whole deſerving of praiſe, has been found in ſome parts inaccurate, and in many leſs intelligible than the Perſian Verſion. It may be proper to add in this place, that in noticing, for obvious reaſons, what has appeared upon inquiry to be erroneous or deficient in the late Mr. HAMILTON's tranſlation of the *Hidáyáh*, no intention whatever is entertained of impeaching the perſonal merits or reputation of that gentleman; who laboured under a material diſadvantage in not having completed his arduous and laudable undertaking in India.

† Complete copies of the three commentaries are among the books procured from *Lukhnow*, for the court of *Nizámut Ádálut*.

the

Ashbáh o Nuzáyir, and its commentaries.

the tenth century of the *Hijrah*, by ZYN ŏŏL ÂÁBIDEEN, already mentioned as the author of the *Buhr-i-ráyik*. It is ſtated in the *Kuſhf ŏŏ' Zunoon* to conſiſt of ſeven ſections, (denominated *fun*); the two firſt of which relate to the general principles and rules of law; and the *Kăzee ŏŏl Kŏŏzát*, in deſcribing a copy of it, which belongs to the *Nizámut Âdálut*, obſerves, that "although a ſhort tract, it contains legal *principia*, from which "numerous caſes may be deduced; wherefore to able lawyers "it is of the utmoſt advantage." Thirteen commentaries upon it are noticed in the *Kuſhf oo' Zunoon*, but none of them are known to be in India *.

The *Mujmâ ool buhryn* and comments.

BESIDES the texts and commentaries above deſcribed, as in actual uſe for legal expoſitions, the *Mujmâ ŏŏl buhryn*, a text book compoſed by MOZUFFUR CO' DEEN AHMUD, of *Bughdád*, A. H. 690, is alſo in the poſſeſſion of a learned Moſulman in *Calcutta*,† together with one of its commentaries, written by ÂBD ŏŏ' LUTEEF BIN-I-ÂBD ŏŏL ÂZEEZ; but as no other copy of either the text or comment is known to be forthcoming; they cannot be in general uſe.‡

OF

* MOÚLAVEE MOHUMMUD RÁSHID poſſeſſes two commentaries on the *Aſhbáh o Nuzáyir*, one of which, called the *Ghumzŏŏl Ŏyoon*, was written by SÝYID AHMUD BIN-I-MOHUMMUD HUMAVEE. The author of the other is unknown.

† MOÚLAVEE KUREEM ŏŏ' DEEN, by whom (in concert with MOÚLAVEE MOHUMMUD RÁSHID) I have been materially aſſiſted in preparing the ſhort account given of books on the Mohummudan law; and who has made for me a complete Perſian tranſlation, from the *Arabic* original, of the *Kuſhf ŏŏ Zunoon*. He received the *mujmâ-ŏŏl buhrýn*, and its commentary, from SHURÁFUT MOHUMMUD KHÁN, *Meer Moonſhee* to the NUWÁB MOZUFFUR JUNG; who ſupported a *Mudruſah* at *Moorſhidábád*, in which KUREEM ŏŏ' DEEN was *Mudurris*, or Lecturer.

‡ In addition to the books on juriſprudence, which have been noticed; the following are deſcribed in the *Kuſhf ŏŏ' Zunoon*; but none of them are known to be at preſent in *Hindooſtan*. The *Ajnás* and *Ahkám*, by ABOŎL ÂBÁS AHMUD NÂTIFEE, who died A. H. 446; the *Tujnees o' Muzeed* by the author of the *Hidáyah*; the *Hávee ŏŏl Huſeeree* by MOHUMMUD-BIN-I-IBRÁHEEM, of *Huſeer*, who died A. H. 505. The *Futáwá-i-kŏŏbrá* by SHAHEED HISÁM ŏŏ DEEN ÔMUR, who ſuffered martyrdom in the 536th year of the *Hijrah*. The *Khiláſut ŏŏl futáwá*, by TAHIR BIN-I-AHMUD, of *Bokhárá* who died A. H. 542. The *Mŏŏltukut*, by NÁSIR ŏŏ' DEEN, ABOŎL KÁSIM, of *Sumurkund*; finiſhed A. H. 549. The *Hávee ŏŏl Kŏŏdſee* by KÁZEE JUMAL ŏŏ' DEEN AHMUD of *Ghuzná*, who lived in the latter part of the 6th century of the *Hijrah*. A *Tulkhees* (abridgement) of the *Jámâ-i-kubeer*, by KUMÁL ŏŏ' DEEN MOHUMMUD,

of

The *Futáwá i-Aálumgeeree.*

Of the books of *Futáwā* which have been mentioned, none appear to require further notice, except the *Futáwā-i-Âálumgeeree.* Mr. HAMILTON, by an extraordinary miſtake, has ſtated this work to have been "compoſed in the *Perſian Lan-* "*guage,** by the authority and under the inſpection of the "Emperor AÚRUNGZÉB;" whereas it is well known to have been written in *Arabic,* the uſual language of Mohummudan law and ſcience; and to have been tranſlated into *Perſian,* by order of the Emperor's daughter, the Princeſs ZÉB ŏŏ' NISÁ. Several copies of the *Arabic* original are in *Calcutta;* and ſome imperfect copies of the *Perſian* verſion; or rather of parts of it†. In the catalogue of books appertaining to the *Nizámut Âdálut* (among which is an incomplete copy of the *Arabic Futáwá-i Aálumgeeree)* the *Kázee ŏŏl Kŏŏzát* deſcribes this work in the following terms:—"It was commenced "A. H. 1067, correſponding with the 11th year of ÂÁLUM-

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of *Khilát,* who died A. H. 652. The *Mokhtár,* and its commentary, the *Ikhtiyár,* by MUJD ŏŏ' DEEN ÂBDŏŏLLAH of *Mŏŏſul,* ſuppoſed to have flouriſhed in the 7th century of the *Hijrah.* The *Ghŏŏrur ŏŏl Ahkám,* and its comment, the *Doŏrur ŏŏl hoŏkkám,* by MOHUMMUD BIN-I FURÁMOORZ, commonly called MOOLLA KHOŏSRÓ, who died A. H. 887; and the *Mŏŏltuka ŏŏl Abhoor,* by IBRAHEEM BIN-I-MOHUMMUD CHULPEE (a Syrian) finiſhed A. H. 923. Of theſe works the three laſt mentioned only are text books. The remainder (excepting the abridgement of IMAM MOHUMMUD's great *Jámâ,*) are collections of caſes, of the nature of *Futáwá.* A further collection, entitled *Khuzanut ŏŏl futáwá,* by AHMUD BIN-I-MOHUMMUD, is among the Books of the *Nizámut Ádálut,* and ſuppoſed by the *Kázee ŏŏl Kŏŏzát* to have been compiled towards the end of the 8th century of the *Hijrah.* Alſo a Perſian compilation, named *Futâwa'-i-Kurakhánee,* the caſes included in which were collected by MOŏLLA SUDR ŏŏ' DEEN BIN-I YÂKOOB, and arranged, ſome years after his death, by KURÁ KHÁ'N, in the reign of SOOLTAN ÛLÁ ŏŏ' DEEN. The *Kázee ŏŏl Kŏŏzát* has likewiſe preſented to the *Nizámut Ádálut* a ſmall Perſian book, entitled *Mokhtár ŏŏl Ikhtiyár,* written A. H. 971, by *Ikhtiyár* ſon of GHYÁS ŏŏ' DEEN HUSUN; containing, beſides the duties of a *Kázee* and *Mŏŏftee,* legal forms of various deſcriptions for practical uſe.

* Preliminary Diſcourſe, p. 44.

† Mr. H. COLEBROOKE poſſeſſes a folio volume, containing about half of the entire tranſlation, from the commencement to the book upon evidence. I have alſo a volume which contains from the book on marriage, to that upon endowments, or religious and charitable appropriations. And, at my ſuggeſtion, the Governor General in Council has been pleaſed to inſtruct the Reſident at *Debly* to endeavor to procure two or more complete copies of the Perſian verſion made by order of ZÉB ŏŏ' NISÁ, with a view to prepare a collated tranſcript, which may be hereafter printed and publiſhed. I have likewiſe a correct Perſian tranſlation of the book on *Jináyát* or offences againſt the perſon, made for me, a few years ſince, by MOŏLUVER SÂEED ŏŏ DEEN, (now law officer of the *Burély* court of circuit) under the ſuperintendence of his father, the *Kázee ŏŏl Kŏŏzát,* who has added notes of explanation where they appeared requiſite. This verſion will probably be printed and publiſhed, as it well deſerves to be.

" geer's reign. Credible perſons have related, that when " MEERZÁ KÁZIM, author of the *Âálumgeernámah* had finiſh- " ed, and preſented to His Majeſty, the hiſtory of the firſt ten " years of the reign, it occurred to the King that there were " many books of hiſtory in the world, and that from the in- " clination which mankind have to read ſuch books, they " are compoſed without orders from Kings and Nobles; that " the foundation of good government is juſtice; and that this " depends upon a knowledge of the ordinances of the law; " that although the learned of every age had compiled expo- " ſitions of the law, yet in ſome inſtances the examples were " ſo diſperſed that they could not readily be found, when " required; and in others, the caſes of leſs weight were not " diſtinguiſhed from thoſe adjudged to be authoritative; " whilſt ſome deciſions alſo had been unneceſſarily repeated; " and others, though requiſite, had been omitted; wherefore " it was proper that, in the preſent reign, a new *Futáwá* " ſhould be compiled, to be arranged in the moſt approved " manner; and to contain the moſt authoritative deciſions of " law, including every uſeful caſe, which had been adjudged, " without repetition or omiſſion. As ſoon as the King had " formed this deſign, he ordered MEERZÁ KÁZIM to diſcon- " tinue writing the *Âálumgeernámah*; and not to take in fu- " ture the ſum allotted for it from the royal treaſury. He " then aſſembled a number of eminent lawyers from the *Pun-* " *jáb*, the environs of *Shâhjahán-ábád*, *Akbur-ábád*, *Ilah-ábád*, " and the *Dukhun*; and employed them in compiling the " work, which was afterwards called the *Futáwá-i-Âálumgeeree*. " In truth no other *Futáwá* is equal to it in excellence. It has " become celebrated in every city, as well in *Arabia* as in other " countries; and is termed at *Mecca* the *Futáwá-i-Hind*, or " Indian expoſitions. It is eſteemed by the learned of every " country, and is received as an authority for law deciſions in " this empire." It is added, that ſix lacks of rupees are ſaid to

have

have been diſburſed in ſtipends to the learned compilers, the purchaſe of books, and other expences attending the execution of the work.

THE *Futáwá-i-Áálumgeeree* being four times the ſize of the *Hidáyah*, and containing little more than a recital of law caſes; without the arguments and proofs, which are diffuſively ſtated in the *Hidáyah*, it muſt poſſeſs an advantage over that work, for practical uſe, in its greater number of caſes and examples. On the other hand, the full illuſtration of the law, its principles, and the different doctrines promulgated by ſome of the moſt eminent expounders of it, which diſtinguiſh the *Hidáyah*, give an evident preference to it as a book of elementary inſtruction. The authority of the *Hidáyah*, as an original compoſition by a celebrated juriſt, who, from his ſuperior knowledge and qualifications, was eſteemed a *Mŏŏjtahid*, is alſo above that of the *Futáwá-i-Áálumgeeree*; which, however valuable, as the lateſt and moſt comprehenſive collection of caſes, is held in leſs comparative eſtimation, from its being a modern compilation, made by ſeveral perſons, of different judgment, and unequal ability. Without contraſting their reſpective merits, however, the one is univerſally admitted to be a moſt uſeful ſupplement to the other; and a converſance in both, or an eaſy means of reference to them in caſes of judicial occurrence, muſt be of eſſential uſe towards the due adminiſtration of the Mohummudan law, as far as that law is declared to be the eſtabliſhed rule and ſtandard of deciſion. The following ſketch of the criminal law will therefore be taken chiefly from the *Hidáyah* and *Futáwá-i-Áálumgeeree*; the former ſupplying, in general, the rules and principles; the latter, in addition to what are ſpecified by the author of the *Hidáyah*, any uſeful caſes cited in illuſtration of them.*

The *Hidáyah* and *Futáwá-i-Áálumgeeree* compared and diſtinguiſhed.

Authorities for the following ſketch of the criminal law.

THE

* Mr. HAMILTON's tranſlation of the *Hidáyah* renders it unneceſſary to ſtate the general contents of that work. The *Futáwá-i-Áálumgeeree* conſiſts of 61 books (*Kitáb*) in the following order:—1. *Tahárut*, purification. 2. *Sulát*, prayer. 3. *Zukát*, alms. 4. *Sóm*, faſting. 5. *Huj*,

General heads or principles.

THE proviſions of the Mohummudan law, which have immediate reference to the definition and puniſhment of crimes, may be claſſed under three general heads, or principles of penal juſtice. I. *Kiſás*, or retaliation: with it's appendage *Diyut*, the fine of blood. II. *Hŏŏdood*; (plural of *hudd*;) preſcribed or fixed penalties. III. *Tâzeer* and *Seeáſut*; diſcretionary correction, and puniſhment.

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5. *Hujj*, pilgrimage. 6. *Nikáh*, marriage. 7. *Ruzáâ*, foſterage. 8. *Tulàk*, divorce. 9. *Ŭtàk*, manumiſſion. 10. *Aſmán*, vows. 11. *Hŏŏdood*, fixed penalties. 12. *Surikah*, larceny. 13. *Siyur*, inſtitutes or regulations concerning infidels, apoſtates and rebels. 14. *Lukeet*, foundlings. 15. *Lŏŏktah*, troves. 16. *Ibâk*, abſconding of ſlaves. 17. *Mufkood*, miſſing perſons. 18. *Shirkut*, partnerſhip. 19. *Wukf*, endowment; or religious and charitable appropriation. 20. *Byá*, ſale. 21. *Surf*, exchange of coin or bullion. 22. *Kufálut*, bail. 23. *Hurwálut*, transfer of debts. 24. *Adub ŏŏl Kázee*, the duty of a *Kázee*. 25. *Shahádut*, evidence. 26. *Rŏŏjoo,â un, Shahádut*, retraction of evidence. 27. *Vukálut*, agency. 28. *Dâwá*, claim. 29. *Ikrár*, acknowledgment. 30. *Sŏŏl,h*, compoſition. 31. *Mozárubut*, copartnerſhip in ſtock and labour. 32. *Wudee,ût*, depoſit. 33. *Áareeyut*, lending without return. 34. *Hibah*, giſt. 35. *Ijárah*, hire and farm. 36. *Mokâtub*, covenanted ſlave, 37. *Wula*, connection of emancipator and freedman; or of patron and client. 38. *Ikráh*, compulſion. 39. *Hujr*, inhibition and diſqualification. 40. *Mázoon*, licenſed ſlave, and ward. 41. *Ghuſb*, uſurpation. 42. *Shŏŏfáh*, right of vicinity. 43. *Kiſmut*, partition. 44. *Mozára,ût*, compact of cultivation. 45. *Moâ,ámulut* or *Moſákát*, compact of gardening. 46. *Zubâyih*, animals ſlain by *Zubh*, or inciſion of the throat. 47. *Ŏŏzheeyah*, ſacrifice. 48. *Kurâhiyut*, abomination, diſapprobation, or cenſure. 49. *Tuhurree*, preſumptive preference. 50. *Ihyá ŏŏl muwât*, cultivation of waſte land. 51. *Shirb*, right to water. 52. *Uſhribah*, intoxicating liquors. 53. *Sýd*, game. 54. *Rihn*, pledge. 55. *Jinâyát*, offences againſt the perſon. 56. *Wuſáyá*, teſtamentary bequeſts. 57. *Muházir ó Sijillát*, judicial proceedings and decrees. 58. *Shŏŏroot*, legal forms. 59. *Hiyul*, legal devices. 60. *Khŏŏnſa*, hermaphrodite. 61. *Furá,eez*, rules of inheritance.

OF the ſixty one books enumerated, fifty five correſpond with ſimilar titles in the *Hidâyah*. Two other books in the latter work, entitled *Diyut* (the fine of blood), and *Mu,âákil* (exaction of the fine of blood), are included in the *Âálumgeeree* as chapters of the book of *Jinâyát*. The book of *Shirb* in the *Âálumgeeree* forms a ſection of the book entitled *Ihyá ŏŏl muwât* in the *Hidâyah*. The remaining five books of the *Futáwâ-i-Âálumgeeree*, viz. thoſe entitled *Tuhurree*, *Muházir ó Sijillát*, *Shŏŏroot*, *Hiyul* and *Furá,eez*, are not included in the *Hidâyah*.

The general diviſion and arrangement of both the *Hidâyah* and *Âálumgeeree* appear to have been adopted from the *Jámâ-i-Sugheer* of IMAM MOHUMMUD. The ſame order is alſo obſerved in moſt other works written by the followers of ABOO HUNEEFAH; and the author of the *Buhr-ŏŏ-râyik* has endeavoured to ſhew that it is founded on a principle of ſucceſſive connection. But his reaſoning does not appear ſatisfactory. It may be uſeful to add, however, that the Moſulman law in the moſt extenſive ſenſe of the term (*Shurâ*, or *Deen-i-iſlám*) comprehends the ordinances of religion, and the duties of man towards his Creator, as well as his rights and obligations towards his fellow creatures. It is therefore ſtated in the *Buhr-i-râyik* to compriſe five principal heads; namely, 1. *Iâtikádát*, articles of faith. 2. *Ibádat*, acts of worſhip and piety. 3. *Moâámulát*, affairs of life, or civil tranſactions. 4. *Muzájir*, puniſhments for the prevention of crimes. 5. *Ádáb*, manners, or rules of behaviour. In books of juriſprudence (*fik,h*) the firſt and laſt heads are omitted. The other three are included; and the head of *Ibádát* always precedes the *Moâá,mulát*, and *Muzájir*, as of ſuperior importance.

THE

Crimes provided for under each head.

THE crimes, provided for under the firſt general head are denominated *Jináyát*; or, in the legal ſenſe of that term, offences againſt the perſon; but are reſtricted to homicide, maiming, and wounding.* The ſecond head includes adultery, or rather whoredom *(Zina)* whether between married or unmarried perſons; ſlander of whoredom, *(Kuzuf;)* drinking wine, *(Shŏŏrb;)* theft, *(Surikah-i-Soghrá;)* and robbery, *(Surikah-i-kobrá).* The third head comprizes all crimes not expreſsly falling within the laws of *Kiſás* and *Hudd*, together with ſuch as, though comprehended in the general proviſions of thoſe laws, are ſpecially excepted from the operation of them, by ſome doubt, or legal defect *(Shŏŏbhah)*, which bars the adjudication of *Hudd* or *Kiſás*.

Juſtifiable homicide.

HOMICIDE is either lawful and juſtifiable; or unlawful and penal. Juſtifiable homicide *(Kutl i-mobáh)* is not diſtinctly treated of in books of Mohummudan law; but is incidentally mentioned, as commanded in the advancement of religion, or juſtice; as authorized in the defence of perſon, or property; and for the prevention of an atrocious crime; or as exempted from the proviſions againſt unlawful homicide in conſideration of ſome circumſtance of neceſſity or juſtification.

In what inſtances expreſsly ſtated.

THE following inſtances of juſtifiable homicide are expreſsly noticed in the *Hidáyah*, *Futáwá-i-Âalumgeeree*, or other authorities.

In proſecution of war againſt hoſtile infidels.

1. IN proſecution of war againſt hoſtile infidels, for the advancement of *Iſlám*, or in ſupport of a *Moſulmán* community. This is enjoined by the *Korán*; but the injunction for offenſive warfare againſt unbelievers is conſidered to be ſufficiently obſerved when it is carried on by any one

* *Kutl, Kutâ, and Jurh.* See Introd. to Book of *Jináyát* in *Hid.* and *F. Â.*

tribe or party of *Moſulmans*, and it is not then obligatory upon the reſt.*

Of an apoſtate from the faith of *Iſlám*.

2. Of an apoſtate from the faith of *Iſlám*; who, after being duly called upon, may perſiſt in his apoſtacy. It is ſtated in the *Hidáyah*, that, "if any perſon kill an apoſtate, "before an expoſition of the faith has been laid open to "him; it is abominable (*Mukrŏŏh*). Nothing however is "incurred by the ſlayer; becauſe the infidelity of an alien (in a ſtate of hoſtility, which apoſtacy is conſidered to be) "renders the killing of him admiſſible; and an expoſition of "the faith, after a call to the faith, is not neceſſary." †

Of an inſurgent againſt the rightful *Imám*.

3. Of an Inſurgent againſt the rightful *Imám*, when ſlain in the act of inſurrection; or of open reſiſtance to the eſtabliſhed Government. The ſame juſtification is extended by Aboo Huneefah and his diſciples, to an inſurgent killing a loyaliſt, in actual conflict, if the rebel maintain a plea of right in his rebellion; though Aboo Yoosuf, in this caſe, deems the ſlayer to be precluded from inheriting the property of the ſlain; and Shafiîee conſiders the rebel, killing a perſon of protected blood, to be liable to all the penalties of wilful homicide. ‡

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* *Hid.* Book. *Siyur.* Chap. I.

The ſame Book contains the Inſtitutions of Mohŭmmud for carrying on war againſt Infidels, and dividing the plunder taken from them; for making peace with them, and granting them protection on their engaging to pay the *Jizyah*, or capitation tax; for regulating this tax, as well as the two deſcriptions of land tax (*Ooſhŏor* and *Khiráj*;) for determining the rights of conqueſt over Infidels, or by them. The correſponding book of *Siyur* in the *F. Ádlumgeeree* contains ſimilar proviſions; and the ſame ſubject is treated of in Sale's Prel. Diſc. p. 142; but more fully by Reland in his treatiſe *De jure militari Mohammedanorum.*

† Trans: of Hid. Vol. 2. p. 227. The law concerning apoſtates, whoſe perſon and property are deprived of legal protection during their apoſtacy; and who are not even admitted to the protection of a *Zimmee*, or Infidel ſubject; is explained, at length, in a chapter of the Book of *Siyur* entitled *Mŏŏrtudd*, expreſsly appropriated to them, in both the *Hidáyah*, and *F. Ádlumgeeree.*

‡ See the oppoſite arguments of Aboo Huneefah and his followers; in Trans. of Hid. V. 2. p. 254. Alſo the whole law reſpecting Rebels, or more properly, *Religious Inſurgents*, (being reſtricted to *Moſulmáns*, diſſatisfied with their *Imám*, of the ſame perſuaſion) in the chapter entitled *Boghát*, forming part of the Book of *Siyur*, in both the *Hidáyah* and *F. Ádlumgeeree.*

4. Of a condemned criminal by order of the *Kázee;* or magiſtrate authorized to paſs ſentence of death.* In like manner, if the magiſtrate order the infliction of legal puniſhment not capital, and it happen to occaſion death, no penalty is due according to the opinion of Aboo Huneefah and his followers; "becauſe the magiſtrate is authorized in what he does by "the law; and an act ſanctioned by the law is not reſtricted to "the condition of preſerving life." Shafiîee however maintains that the fine of blood, as for erroneous homicide, is due in this caſe to the heirs of the deceaſed; and that as the act of the magiſtrate was for the public advantage, it ſhould be paid from the public treaſury. † In execution of a legal ſentence.

5. Of a murderer, liable to *Kiſás;* if killed by the perſon legally entitled to retaliation, or by his expreſs direction; although ſentence of *Kiſás* may not have been paſſed by the *Kázee.* This aſſumption of right, without a judicial inquiry, is however deemed culpable; and the exerciſe of it by any other weapon than a ſword, or ſimilar inſtrument, is declared ſubject to correction. The ſame principle of juſtification is extended by Aboo Yoosuf and Imám Mohummud, to the caſe of a perſon entitled to *Kiſas* for a limb; and cauſing death by ſtriking it off; as "he has taken his right; and it is impoſſible to reſtrict "diſmemberment to the condition of preſerving life." But Aboo Huneefah holds the price of blood for erroneous homicide to be due, as the ſlayer's "right was to diſmember, not "to kill;" and the exaction of retaliation being permitted only, not enjoined, ſhould, in caſes ſhort of life, be taken ſubject to the condition of preſerving life ‡ In enforcement of a legal right to *kiſás*, although a judicial ſentence have not been paſſed.

In

* See concluding ſection of the Book entitled *Adub ool Kázee* in the *Hidáyah*, p. 661, vol. 2, of the Tranſlation.

† See the argument ſtated more at length, with a diſtinction between puniſhment, inflicted by the magiſtrate, in purſuance of the law; and private chaſtiſement, as by a huſband of his wife: in which the preſervation of life is requiſite. *Hid.* chap. *Tâzeer*, Trans. vol. 2, p. 81.

‡ See this argument in Trans. of *Hid.* vol. 4, p. 316. The right of enforcing *Kiſás* for wilful homicide without a judicial ſentence is recognized in the *Hidáyah*, and expreſsly declared in the *Mohect*, as quoted in the *F. Á.* to the following effect. "If a perſon wilfully murdered leave

In ſelf-defence, or in defence of another, if life be thought in danger, from an aſſault with a drawn ſword or other mortal weapon.

6. In ſelf-defence, or in defence of another, if life be endangered, or be thought in danger, from the aſſault of a perſon having a drawn ſword, or other mortal weapon. If however ſelf-defence be manifeſtly attainable without killing the aggreſſor, it is not lawful to ſlay him. And it is declared in the *Hidáyah*, that "if a perſon draw a ſword upon another, and ſtrike him, "and then go away; and the perſon ſtruck, or any other, af- "terwards wilfully kill the ſtriker, ſuch ſlayer is liable to reta- "liation. This is where the ſtriker retires in ſuch away as in- "dicates that he will not ſtrike again; for as, upon his ſo re- "tiring, he no longer continues an aſſailant, and the protection of "his blood (which had been forfeited by the aſſault) reverts, "retaliation is conſequently incurred by killing him."* It is further

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leave a ſingle heir, ſuch heir is entitled to put the murderer to death, with a ſword or ſimilar inſtrument, although the *Kázee* may not have paſſed ſentence of *Kiſás*. If the heir attempt to kill the murderer with any other weapon than a ſword, or ſimilar inſtrument, he ſhould be reſtrained, or if he perpetrate the act, he is liable to diſcretionary puniſhment *(Tâzeer;)* but he is not otherwiſe reſponſible; as he has taken only his legal right in whatever manner he may have put the murderer to death." It is added—that "if a perſon liable to *Kiſás*, for a murder committed by him, be wilfully put to death by a ſtranger who is not one of the heirs of the ſlain, ſuch ſtranger is ſubject to retaliation of death; although the heir of the perſon murdered ſhould declare that he had ordered the ſtranger to kill the murderer; unleſs he can adduce witneſſes to the truth of ſuch declaration.

* Tranſlation of *Hidáyah*, V. 4, p. 293, See alſo the law of juſtifiable homicide in ſelf defence explicitly ſtated in page 291: but as the tranſlation is ſomewhat inaccurate, as well as imperfect, and the ſubject is important, the following more correct verſion is ſubmitted.

"If any perſon draw a ſword upon a Moſulmán, he (the Moſulmán) is at liberty to kill him in ſelf-defence; becauſe the prophet has ſaid, "He who draws a ſword upon a Moſulmán, renders his blood liable to be ſhed with impunity;" and alſo, becauſe a perſon who thus draws a ſword is equivalent to a rebel, on account of his hoſtility; and it is lawful to ſlay ſuch, God having ſaid in the *Korán*, "Slay thoſe who are guilty of ſedition, to the end that they may be reſtrained." Beſides it is indiſpenſably requiſite that a man repel murder from himſelf; and as, in the preſent inſtance, there is no method of effecting this but by ſlaying the perſon, it is conſequently lawful ſo to do. If, however, it be poſſible to effect ſelf-defence without ſlaying the perſon, it is not lawful to ſlay him. It is written in the *Jámâ-i-Sugheer*, that if a perſon draw a weapon upon another, during either night or day, or lift a ſtaff againſt another in the night in a city, or in the day-time in the highway out of the city, and the perſon ſo threatened kill him who thus draws the weapon, or lifts the ſtaff, nothing is incurred; becauſe, as ſtriking with a weapon affords no room for delay or deliberation, it is, in this caſe, neceſſary to kill the perſon in order to repel him; and although, in the caſe of a ſmall ſtaff there be more room for deliberation, yet in the night-time aſſiſtance cannot be obtained; and hence the perſon threatened is in a manner forced, in repelling the other's attack, to kill him; and ſo likewiſe where the attack is made during the day-time in the highway, as there aſſiſtance

further ſtated in the *Hidayah*, that if a lunatic, or an infant, draw a ſword upon a perſon, and be ſlain in conſequence, the fine of blood is due from the ſlayer according to the opinion of ABOO HUNEEFAH, and IMÁM MOHUMMUD; though not according to the opinion of SHAFIÎEE and ABOO YOOSUF.* It may be added from the *Zuheereeyah*, as quoted in the *Futáwa-i-Âálumgeeree*, that "IMÁM MOHUMMUD has declared it juſtifiable to kill "a perſon who attempts by violence to pluck out the teeth of "another; where there is no one preſent to afford relief. But "that it is not lawful to repel by homicide a forcible attempt "to file the teeth, although there be no one at hand to relieve."

In preſervation of property from theft or robbery.

7. IN preſervation of property from theft or robbery. It is ſtated in the *Hidayah* that "if a perſon come in the night to a ſtranger and carry off his goods by theft; and the owner of the goods follow and ſlay him; nothing whatever is incurred; the Prophet having ſaid "ye may kill in preſervation of your property." It is to be obſerved however that this is only where the owner cannot recover his property but by killing the thief.† The ſame caſe is ſtated in the *Humádeeyah*, with this addition.

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aſſiſtance cannot readily be obtained. When therefore a perſon thus ſlays another, the blood of the ſlain is of no account. Moreover the learned have declared a large ſtaff which the body cannot reſiſt, and which kills inſtantaneouſly, is the ſame, in effect, with a weapon, according to the opinion of the two diſciples."

The following authority for juſtification of homicide, in defence of another threatened by a drawn ſword, (or other mortal weapon) is quoted from the *Tubieen* in the *F. Âálumgeeree*. "If a perſon draw a ſword upon a Moſulmán, it is lawful to put him to death, and it is the ſame whether he be killed by the perſon upon whom the weapon is drawn, or by another in his defence; nor is there any difference in this caſe, whether it be day or night; and within or out of a city." It is added from the *Kafee*, that, "if a perſon lifts a ſtaff to ſtrike another by night in a city, or by day without a city, and the perſon ſo lifting a ſtaff be killed, no reſponſibility attaches to the ſlayer. But if the perſon lifting a ſtaff againſt another, by day and within a city, be wilfully killed, the ſlayer is liable to be put to death in retaliation, according to ABOO HUNEEFAH; though not according to his two diſciples."

* Trans. of *Hid.* Vol. IV. p. 292. The opinion of ABOO YOOSUF (that in the caſe ſtated, the lunatic and infant having, by their aggreſſion, forfeited their right of legal proteſtion) is omitted in the tranſlation.

† Trans. of *Hid.* Vol. IV. p. 293. It is added, from the Perſian verſion, "for if he knew "that upon his calling out the thief would relinquiſh the goods; and he notwithſtanding "neglect

addition; "but if the thief throw down the property, the killing him is not lawful." And it is more fully quoted from the *Moheet* in the *Futáwá-i Âálumgeeree*, that if the thief, on being called to, run away, and throw down the property, it is not lawful to kill him." The three following cases are also cited in the *Humádeeyah*. 1. If the owner of a house see a thief breaking into it, he may kill the thief, or throw a stone, or shoot an arrow at him. It is not requisite to warn him first, according to ABOO HUNEEFAH: though ABOO YOOSUF says, that warning should be first given to the thief, and if he do not then run away, he may be shot.* 2. But if a thief enter your house, and you apprehend he may be armed and will attack you, in this case you may shoot him; and it is not requisite to warn him.† 3. ABOO YOOSUF further says, that if an unarmed thief enter a house, and if the owner, though strong enough to seize him, apprehend that he would run away and escape with some of the effects; it is lawful, in such case, to strike and kill the thief. The last case is likewise stated *verbatim* in the *Mŏŏntukà*, and the second with the following variation. "A man enters the house of another,

"neglect calling out and slay him; retaliation is incurred; since he, in this case, slays "the person unjustly." Thus is not in the Arabic original; and an argument is omitted that the owner of the house was justifiable in killing the thief from the beginning. The inference in the Persian version has however the authority of one of the commentaries on the *Hidayah* (the *Áynee*, as quoted in the *F. Á.*) and another (the *Kifáyah*) states responsibility (*Zumánut*) to be incurred; but without specifying *kisás*, or *diyut*.

* IMÁM MOHUMMUD appears to have been of the same opinion with ABOO YOOSUF, by a similar case quoted in the *F. Á.* from the *Nuwádir* of IBN-I SUMÁÂH: though the slayer of a thief, in the predicament specified, without warning him, is declared liable to the fine of blood only. In a further quotation of the same case from the *Zukheerah*, supposing the thief to be killed by a stone, the fine of blood is stated to be payable by the *âákilah* (hereafter explained) and expiation only to be due from the slayer. But this has reference to the opinion of ABOO HUNEEFAH, that homicide by a stone is manslaughter.

† A similar case is quoted from the *Moheet*, in the *Humádeeyah*, and was also cited from the *Bubr-i-rayik*, in a *Futwa* delivered by the law officers of the *Nizámut Ádálut* in 1799, relative to punishment upon presumptive evidence; viz. that if a man enter the house of another with a drawn sword, and the owner of the house apprehend an intention against his life, he is justified in putting the stranger to death, on the presumption that it is necessary for his own security. But this case may be considered more applicable to the preceding head, of justifiable homicide in self defence.

and

and attempts to take away his property. The owner may kill him, provided he is not able to ſeize him *. It is the ſame if the thief have taken property; and the owner, though ſtrong enough to ſeize him; fear that the thief would ſhoot, or otherwiſe kill him." Another caſe is ſtated in the *Humá-deeyah*, and is likewiſe quoted in the *Futáwá-i Âálumgeeree*, to this effect. " A thief raiſes his head above a wall, on which the owner had placed ſome cloth, and he fears that on calling out the thief would ſteal the cloth and eſcape. In this caſe, the owner may ſhoot at and kill the thief; provided, according to the opinion of ſome lawyers, the value of the cloth be ten *dirms* † or more: but ABOO'L LÝS, on the authority of the tradition from the prophet (above quoted) holds it lawful to ſhoot at the thief, unconditionally." The author of the *Mooltukut* ſtates that " If a man, on a plain, attempt to take the property of another, it is lawful to kill the robber, provided the property be ten *dirms*, or more, in value;" and adds, " it is the ſame with reſpect to a man breaking into a houſe, if killed by the owner." In the *Mŏŏntuka*, cited by the author of the *Moheet*, and quoted in the *Futáwá-i Âálumgeeree*, the right of preſerving property is further ſtated to juſtify a man's killing another, who may attempt to take away from him, by force, a piece of bread, or ſome drinking water, provided the owner of the bread, or water, ſhall be apprehenſive of hunger or thirſt to himſelf. And the author of the *Kŏŏnyah* declares that no penalty is incurred for killing a perſon who

* This caſe is alſo cited in the *Fátawa Âálumgeeree* from the *Moheet* of SURUKHSEE: with an addition " that the thief may be killed, whether he ſhall have attacked the owner or not." And the ſame caſe is ſtated, in the *Yunabee-â*; with the authority of HUSUM, in his *Mojurrid*, that " it is lawful for the owner of a houſe to kill a man, who enters it with an intention of " theft."

† This value is requiſite for the penalty of *Hudd* in caſes of robbery. Mr. HAMILTON calculates the *dirm*, or tenth part of a *deenar*, to be from eight to nine pence; by which valuation ten *dirms* are about ſeven ſhillings. V. note in tranſlation of *H.* vol. II, p. 85. The opinion of ABOO'L LÝS is however adopted in the *Futhŏŏl Kudeer*, and other books of authority, which expreſsly declare that a man may kill in defence of his property, although it be leſs than the legal ſtandard for *Hudd*; and another tradition from the prophet is cited—that " whoever is killed in defending his property obtains martyrdom."

attempt

attempts by violence to take a piece of cloth belonging to another. But theſe muſt be conſidered extreme caſes; and to require, as in other inſtances, a real or preſumed neceſſity, to render the homicide juſtifiable.

In prevention of adultery, rape, or other heinous offences.

8. In prevention of adultery, rape, or other offences, of a heinous nature, being chiefly ſuch as, by the Mohummudan law, are puniſhable with death. The authors of the Perſian Verſion of the *Hidayah*, in their introduction to the chapter of *Tâzeer*, have quoted from the *Nihâyah* (one of the commentaries on the *Hidâyah*) the anſwer of Aboo Jâfur, of *Hŏondwán* (a ward of the city of *Bulkh*) to a queſtion put to him, whether a perſon finding a man in the act of adultery with his wife, might ſlay him? The anſwer given in the Perſian Verſion * is "If he know that the man will deſiſt from the act of adultery, on calling out, or beating him with ſomething not a mortal weapon, the man muſt not be ſlain. But if he believe that death alone will reſtrain the man from the commiſſion of the adulterous act, it is lawful to kill him; and the woman alſo, if ſhe be conſenting to the adultery." It is added from the *Mŏontuka*, † in proof that *Tâzeer*, or chaſtiſement, in ſuch caſes, may be inflicted without an order from the magiſtrate, that it is founded on the principal of removing evil with the hand; which is authorized by an injunction from the prophet to this effect. "Whoever among you ſee evil, it is "incumbent upon you to prevent it with your own hands; "or if you are unable to do this, you muſt forbid it with "your tongues." In the *Buhr-i-râyik*, the interrogatory to, and anſwer of Aboo Jâfur, are quoted from the *Tubiʿeen*, in more general terms, as applied indefinitely to any man and

* There are ſome inaccuracies in the Engliſh tranſlation, vol. II, p. 77, particularly as to the object of prevention, which, by an erroneous interpretation of the words "*Báz khâhud mánd*," is made to be "a repetition of the offence," inſtead of deſiſtance from the full commiſſion of the actual offence.

† Miſnamed the *Moontaſſir*, in tranſlation of *Hidâyah*, Vol. II, p. 77.

woman

woman ſeen in the act of whoredom; inſtead of being reſtricted to a man's finding his own wife in the act of adultery. It is added from the *Mooniyah*, that "a perſon ſeeing a man in the act of whoredom with his wife, or other female connection, and the latter aſſenting thereto, may kill them both." Upon which, and the preceding caſe (as cited from the *Tubyeen,)* the author of the *Buhr-i-rayik* obſerves, "a diſtinction is therefore made between a ſtrange woman, and a wife or other connection. In the caſe of a ſtranger it is not lawful to kill without calling out, or beating with ſomething not a mortal weapon. But if the woman be a connection, it is lawful to kill without this condition." It is further ſtated in the *Buhr-i-rayik*, from the *Mŏŏjtubá*, as a general principle, "that whoever ſees a *Mŏŏſlim* in the act of committing whoredom, may kill him; and need not refrain, except from fear that his plea, of the perſon ſlain having been in the act of whoredom, may not be admitted; and that he may conſequently become liable to *Kiſás*." But to reconcile this with the remark quoted upon the former caſe, the condition of previouſly calling out, or beating, muſt be underſtood, if the woman be not the wife or other connection of the ſlayer. It is alſo ſtated in the *Futáwá* of KÁZEE KHÁN, that "if a perſon ſee a man of legal reſponſibility in the act of adultery with his wife, or with the wife of another, and, on calling out, the adulterer ſhall not run away, or deſiſt, he may be killed and *Kiſás* is not incurred." But this may be likewiſe reconciled with the diſtinction noticed in the *Buhr-i-rayik*, by conſidering the general rule to be ſtated by KÁZEE KHAN, as well as by ABOO JÂFUR, for caſes of juſtifiable homicide, in prevention of whoredom, indiſcriminately; and a further ſpecial rule to be given in the *Mooniyah*, whereby the condition of previouſly calling out, or beating, is diſpenſed with, when a perſon may find his own wife, or other near connection, in the act of adultery.

It is more probable however that the different caſes cited have their origin in a difference of opinion between ABOO HUNEEFAH and his diſciples.* At all events the rule which applies to a wife is declared in the *Humádceyah* to be equally applicable to a female ſlave. It is further ſtated in the *Mŏŏntuka*, that " if a perſon, on entering his houſe, find a diſſolute man with his wife, and be not able to ſeize the man, from fear of being overpowered, he is juſtified in ſlaying the libertine." The ſame caſe is given in the *Syrufeeyah* with an extenſion of it to a female ſlave, as well a wife, and without the condition of inability to ſeize the man; though this may be implied. In the *Mŏŏltukut* it is declared, that " if any one ſee a man about to commit a rape upon a free woman or a ſlave, the raviſher may be killed." And it is added, that " if a perſon find a man with his wife, or female ſlave, in the ſame ſituation, and the wife, or ſlave, be aſſenting to the whoredom, both parties may be ſlain." The ſame caſe is cited in the *Zukeerah*, with the following variation. " If a perſon ſee a man uſing force to commit a rape upon a free woman, or a ſlave; and fear that he will accompliſh his purpoſe, if not put to death; the killing him is juſtifiable. If the woman be aſſenting, the ſame principle is applicable to her ."† The juſtification of homicide

* In a treatiſe upon *Tâzeer*, written by MOÚLAVEE SIRÁJ-ŬL-HUK, after quoting the anſwer of ABOO JÂFUR, in which a previous caution is required, he remarks, " this is taken from the doctrine of IMÁM MOHUMMUD; who directs a previous conſideration of the neceſſity of killing." MOÚLAVEE MOHUMMUD RÁSHID, who has alſo written a diſſertation upon *Tâzeer*, obſerves likewiſe that, on examining different books, he has found a variation in the authorities for juſtifiable homicide; " thus, according to ABOO HUNEEFAH, it is lawful to kill, without any previous warning, perſons ſeen in the act of whoredom; or about to commit whoredom, either with a near connection, or a female ſlave; as well as thieves in the act of ſtealing property, or breaking into a houſe; whereas, according to ABOO YOOSUF, a previous warning to the thief is neceſſary in the latter caſe; and according to IMÁM MOHUMMUD, in caſes of whoredom, or intention to commit whoredom, it is a condition to juſtify the homicide, that there be no other means of prevention."

† The caſes quoted from the *Mŏŏntuka*, *Syrufeeyah*, *Mŏŏltukut*, and *Zukheerah*, are cited by MOÚLAVEE SIRÁJ-OOL-HUK, in his treatiſe on *Tâzeer*, and he remarks upon them, that they ſhew, " a perſon attempting to commit a rape, may be killed though he have not actually committed it; and whether the woman be a wife, or other connection of the ſlayer, or not.

Alſo

homicide by the party on whom a rape, or the crime againſt nature, is attempted, is expreſsly ſtated in the *Nukſhbundeeyah* and the *Humádeeyah*, as follows. "A man uſes force to commit a rape upon a woman, or ſodomy upon a boy, (*umrud*, *lit.* a beardleſs youth,) who is unable to reſiſt and prevent him, except by killing him. The homicide in this caſe is juſtifiable." The following extraordinary caſe is alſo ſtated in the *Humádeeyah*, as well as in the *Syrufeeyah*. "A woman thrice divorced from her huſband, but without witneſſes to prove it before the *Kázee*, if unable to reſiſt and prevent her late huſband's cohabitation with her, may kill him at the time of his attempting to raviſh her. Âbdoŏllah reports from Aboo Huneefah, that if the woman be actuated by a deſire to avoid ſin, and by the fear of God, it is lawful for her to repel the outrage offered to her by killing her late huſband. But ſome of the learned have ſaid that although it is lawful, in this caſe, for the woman to kill her late huſband, with a knife or other weapon; as her plea may not be credited, and *Kiſás* may be demanded againſt her, ſhe ought to kill him with poiſon; thus ſecretly occaſioning his death, as he has ſecretly attempted an unlawful act againſt her *."

9. The killing another at his expreſs deſire, or command. This was declared to be juſtifiable in a *Futwa* delivered by the law officers of the *Nizámut Âdálut* in the year 1798 †, The killing a perſon at his deſire, or command.

Alſo that a perſon ſeeing a man about to commit whoredom with his wife, or other near connection, when no force is uſed, may put both parties to death." This conſtruction is admitted by the other law officers of the *Nizámut Âdálut*.

* To underſtand the full extent of the illegality alluded to in this caſe, it muſt be remembered that a man, after pronouncing three divorces upon his wife, is reſtricted by the Mohummudan law from taking her again, until ſhe have been married to another perſon; and that this reſtriction is founded upon an expreſs prohibition in the *Korán*, ſuppoſed to be of divine authority.—V. tranſlation of *Hidáyah*. vol. I, p. 301.

† It was given on the 15th October 1798, in anſwer to a reference made by the court, for the purpoſe of aſcertaining in what inſtances of wilful homicide a ſentence of death is barred by the proviſions of the Mohummudan law. The purport of the *Futwa*, received in anſwer, is more fully ſtated in the preamble to Regulation VIII, 1799.

and

and it was added, in illuſtration, that the inſtruction to kill proves the right of retaliation to have been remitted. There are however three opinions upon the caſe. One, that the permiſſion to kill does not legally ſanction the homicide, and that it conſequently ſubjects the ſlayer to *Kiſás*. Another, that the permiſſion of the deceaſed affords a doubt, or plea; which bars retaliation of death, but does not exempt the ſlayer from the fine of blood, to which he is liable for wilful homicide when *Kiſás* is barred. The third, as firſt ſtated; and which appears to be the prevalent doctrine; that the deceaſed having power to diſpoſe of his own life, as of other perſonal and proprietary rights, and having authorized the ſlayer to take it away, he cannot be made accountable for the act.* It may be further remarked, in this place, that ſuicide does not incur any forfeiture, or other penalty, under the temporal law of *Iſlám*, though it is held to be ſinful, and puniſhable in a future ſtate.†

Homicide by compulſion, under menaces which induce a fear of death.

10. HOMICIDE by compulſion, *(Ikráh)* under menaces which induce a fear of death, is not ſtrictly juſtifiable under the Mohummudan law; but the penalty of *Kiſás*, according to the opinion of ABOO HUNEEFAH, and MOHUMMUD, is transferred to the compeller; and the compelled perſon is conſidered rather as the inſtrument than author of the homicide; yet not altogether free from criminality, as the act is unlawful; and ſubject to diſcretionary puniſhment, if the circumſtances of the caſe appear to require it. ABOO YOOSUF concurs in exempting the ſlayer, under compulſion, from retaliation of death; but extends the ſame exemption to the compeller, on the exiſtence of a doubt, ſufficient to bar

* The three opinions are cited in the *Mujmá ool-bahrýn*, with an obſervation that the whole are aſcribed, by different reports, to the three *Imáms*, (viz. ABOO HUNEEFAH, and his two diſciples;) and that ZOOFUR preferred the firſt, whereby wilful homicide, under permiſſion, is declared illegal and ſubject to *Kiſás*.

† See Tranſlation of *Hidáyah*, Vol. IV, p. 290.

Kiſás

Kiſás, from his not being the actual ſlayer. Whilſt ZOOFUR and SHÁFIÎEE contend that the compelled perſon is liable to the penalty of murder, as being the immediate cauſe of a criminal homicide, and SHÁFIÎEE further maintains that the compeller, as being the primary cauſe, is ſubject to the ſame penalty.* The principle of juſtification eſtabliſhed by ABOO HUNEEFAH and IMÁM MOHUMMUD is applicable, a *fortiori*, to every caſe of phyſical compulſion, and neceſſity; in which the homicide may be altogether involuntary on the part of the perſon, who is forcibly made the inſtrument of committing it.† But no illegal act can be juſtified under the Mohummudan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, huſband, or maſter; or of any other perſon whatever. Neither is the juſtification of homicide in ſupport of the law, and of legal proceſs, in all caſes, expreſsly provided for; though it cannot be doubted that in caſes of reſiſtance to ſuch proceſs, any acts unavoidably done in the execution of public duty might be juſtified; and that the principles of juſtification which have been ſtated, in caſes of a private nature, would be applicable, with additional force, in all matters connected with the execution or advancement of public juſtice.

BESIDES the ſpecific inſtances of juſtifiable homicide, which have been noticed, the proviſions of the Mohummudan law for diſcretionary puniſhment recognize the general legality of putting to death, if requiſite for the prevention of evil,

Further general caſes, in which homicide is declared to be juſtifiable if requiſite for the prevention of evil, and ſafety of the community.

* See the different opinions more fully ſtated in Tranſlation of *Hidâyah*, Vol. III, p. 406. The following caſe is cited in the *Sirâjeeyah*, *Zukheerah*, and *Humâdeeyah*. "If the *Sŏoltán* compel a perſon to kill a Moſalman unjuſtly, by threatening death upon non-compliance, the *Sŏoltán* is liable to *Kiſás* and the compelled perſon to *Tâzeer*, according to ABOO HUNEEFAH and IMÁM MOHUMMUD."

† A part of the argument of ABOO HUNEEFAH and IMÁM MOHUMMUD, in which the compelled perſon is ſtated to be conſidered as an inſtrument, like a weapon, "or as if he had been thrown by the compeller on the deceaſed, and had thereby occaſioned his death," is imperfectly tranſlated by Mr. HAMILTON, Vol. III, p. 463.

and ſafety of the community, all violent diſturbers of the peace; high-way robbers; extortioners under pretext of the public taxes; falſe informers and accuſers before tyrants for purpoſes of oppreſſion; and generally all habitual ill doers, who make a practice of committing offences injurious to ſociety.* But though it is declared that "the killing ſuch is meritorious; and that God will reward the ſlayers of them," it appears to be rather the province of the magiſtrate, than of individuals, to enforce the law, according to the aſcertained degree of criminality, in ſuch caſes; except in defence of private rights, or to prevent an atrocious crime at the time of the attempt to commit it: for it is expreſsly declared, as a general rule and principle, that "every moſulman may inflict *Tâzeer* upon a criminal, in the act of committing a crime; but after the completion of the offence the magiſtrate only is authorzed to puniſh the offender.†

Province of the magiſtrate to enforce the law in ſuch caſes.

The magiſtrate only being authorized to puniſh the offender after the completion of the offence.

Five deſcriptions of illegal homicide.

ILLEGAL and penal homicide, to which alone the Mohummudan law refers in its definition of offences, under the deſignation of *Jináyát*, is of five deſcriptions.

1. *Kutl-i-úmd*; literally, wilful homicide; but implying a murderous will, evinced by a voluntary act, and by the uſe of a mortal inſtrument; or ſomething likely to occaſion death.

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* *Nuhr-i-ſáyik*, *Tumurtáſhee*, and *Sirajeeyah*, quoted in the *Futáwá-i Álúmgeeree*. Other authorities are alſo quoted in the *Humádeeyah*, with a tradition from the prophet, which is conſtrued to juſtify the killing any general oppreſſor, or evil doer, whoſe depravity infeſts mankind, like a ſnake, ſcorpion, or other noxious animal. But the author of the *Buhr-i-ráyik* intimates that in ſuch caſes, though every *Moŏſlim*, ſeeing the offender in the act of committing the offence, is at liberty to put him to death; he may be reſtrained by the apprehenſion that his plea will not be credited, and that he will conſequently be liable to retaliation.

† *Buhr-i-ráyik*, quoted in the *F. Álúmgeeree*. It is added in illuſtration from the *Kŭnyah*, that "if a perſon ſee another commit an offence, which incurs *Tâzeer*, and ſubſequently to the commiſſion of it inflict *Tâzeer* upon the offender, without authority from the magiſtrate, the perſon ſo inflicting *Tâzeer* is liable to puniſhment at the diſcretion of the magiſtrate."

2. *Shibah i-úmd*;

2. *Shibah-i-ûmd;* or wilful-like, viz. reſembling the former in the voluntarineſs of the act; but differing from it by the uſe of an inſtrument not conſidered to endanger life; and therefore not evincing a murderous intention.

3. *Kutl-i-khutá;* or erroneous homicide; viz. by an erroneous act, or by error in the intention.

4. *Kutl-i-káeem mokám-ikhutá,* alſo called *Járee Muſrá-i khutá,* involuntary homicide, of the ſame nature as the preceding; but differing from the act being involuntary, inſtead of erroneous.

5. *Kutl ba ſubub:* or accidental homicide by an intervenient cauſe.

Definition of *Kutl-i-ûmd*, or murder.

Kutl-i-ûmd, or murder, is defined in the *Hidayah,* to be "homicide committed by a reſponſible perſon; * wilfully "ſtriking another perſon, with a mortal weapon, † or ſome-"thing that ſerves for ſuch, as a ſharp piece of wood, a ſharp "ſtone, or fire." It is added, in explanation, that "*ûmd* "means intentional; but the intention, being concealed in "the mind, can be diſcovered only by ſomething affording "proof of it; and as the uſe of a common inſtrument of "homicide does afford ſuch proof, when the ſlayer of a "man uſes an inſtrument of that deſcription, it proves his "intention to kill." Nearly the ſame definition is quoted in the *Futáwá-i Âálumgeeree* from the *Kháfee,* with the addition of "capacity to ſever the limbs," in deſcribing the ſubſtitute

* The original term, *Mokulluf,* includes all perſons accountable to the law for their actions; and refers particularly to the ſane and adult, who alone are ſubject to the legal penalties of *Hudd* and *Kiſás.* See the Book of *Hujr* or inhibition, in *Hid.* and *F. Á.*

† *Silâh*; lit. arms. As here uſed it appears to mean any inſtrument of death; though it's more ſtrict interpretation is applied to edged weapons, or ſuch as are capable of deſtroying life by diſmemberment.

for

for a weapon; but without the explanatory remark given by the author of the *Hidáyah*.

Shibah-i úmd, or manſlaughter.

WITH reſpect to *Shibah-i-úmd*, which, though not with technical exactneſs, may, to diſtinguiſh it from the crime of murder, be denominated manſlaughter, there is a difference of opinion between ABOO HUNEEFAH and his two diſciples. The former defines it to be "homicide from a reſponſible "perſon ſtriking wilfully with ſomething which is not a "mortal weapon, nor a ſubſtitute for ſuch." ABOO YOOSUF and IMÁM MOHUMMUD (as well as SHAFIÎEE) maintain that if the ſtroke be given with a large ſtone, or a large piece of wood, it is *Kutl-i-úmd*; and they define *Shibah-i-úmd* to be "homicide from ſtriking wilfully with an inſtrument which "is not likely to kill; ſuch as a ſmall ſtick;" adding, as the ground of their opinion, that "in this caſe evidence of the "intention to kill is wanting: the inſtrument uſed not being an "inſtrument of death, it may be preſumed that the deſign was "not death, but correction or ſomething elſe, which reduces the "offence to manſlaughter. But evidence of an intention to "kill is not wanting when an inſtrument, which muſt oc- "caſion death, is uſed. In ſuch caſes therefore it is murder." In anſwer to this reaſoning, ABOO HUNEEFAH argues "that the inſtruments ſpecified (viz. a large ſtone, or large piece of wood) are not appropriated, nor commonly uſed, for the purpoſe of killing. Proof of an intent to kill therefore is wanting, when ſuch inſtruments are uſed, and homicide committed with them is manſlaughter only, as with a whip or ſmall ſtick; which the prophet has declared to be *Shibah-i-úmd* only, and puniſhable by a fine of one hundred camels.*

* See the *Hadees*, referred to by ABOO HUNEEFAH, with the whole of what is quoted on the different opinions reſpecting *Shibah-i-úmd*, in the *Hidayah*. The ſame in ſubſtance, is quoted from the *Mŏŭzmurát*, in the *F. Álumgeeree*, with a remark that the doctrine of ABOO HUNEEFAH is the moſt correct. Without determining this point, it may be obſerved, that all the opinions appear to agree in conſidering an intention to kill the eſſential ground of diſtinction between *Kutl-i-úmd* and *Shibah-i-úmd*. The diſagreement between them reſpects the inſtruments to be admitted as ſufficient evidence of the intent to kill.

THE

THE error which diſtinguiſhes *Kutl-i-khutá*, or erroneous homicide, is either in the act, or in the intention. In the former, as when an arrow is ſhot at a mark, and hits a man. In the latter, as when a man is miſtaken for an animal of game, and ſhot at as ſuch; or when a Moſulman is ſhot, under a ſuppoſition of his being a hoſtile infidel, whom it is lawful to kill. Th ſe examples are ſtated in the *Hidáyah;* and the latter is more fully illuſtrated by a quotation in the *Futáwá-i Âalumgeeree*, from a commentary on the *Jamâ-i-Sugheer*, to the following effect:—" If a Moſulman army engage an army of infidels; and they mix together; and a Moſulman kill another Moſulman, ſuppoſing him to be an infidel; the ſlayer is not liable to retaliation; nor is the fine of blood due, if the Moſulman killed were aſſiſting the infidels." It is added, from the *Mŏŏntukâ* as reported by IMÁM MOHUMMUD, that although a ſtroke aimed at one member, and falling on another member of the ſame perſon, be not ſufficient, if death enſue, to take the caſe out of the predicament of wilful homicide; yet it would be *Kutl-i-khutá* only, if the blow were aimed at one perſon and undeſignedly ſtruck another. The author of the *Hidayah* alſo ſtates the penalty of murder to be incurred, if the blow aimed at one part of the body ſtrike another part and occaſion death; as all the parts of the ſame body compoſe one perſon. But if an arrow, ſhot at one perſon, paſs through him and hit another, and they both die; it is ſtated to be murder with reſpect to the perſon aimed at, and firſt ſtruck, only; it being erroneous homicide, with reſpect to the ſecond perſon, in the ſame manner as when an arrow is ſhot at a deer and inadvertently hits a man *.

Kutl-i-khutá, or erroneous homicide.

* See trans. of *Hid.* vol. IV, p. 307. In a *Futwá* delivered by the law officers of the *Nizámut Âdalut*, in the year 1801, not only the ſhooting at one man and undeſignedly killing another, but even killing the perſon intended, if any accident intervene, ſuch as the arrow, or other inſtrument, paſſing by the perſon aimed at, and killing him on a rebound, was declared to be *Kutl-i-khutá*. V. Preamble to Reg. VIII, 1801.

Kutl-i-kâeem mokâm-i-khutâ, or involuntary homicide by an involuntary act.

THE example given in the *Hidâyah*, of *Kutl-i-kâeem mokâm-i-khutâ*, or involuntary homicide by an involuntary act, is a ſleeping perſon's falling on another and killing him by the fall. The ſame inſtance, with the variation of rolling, inſtead of falling, is quoted in the *Futâwâ-i Ââlumgeeree* from the *Kâfee*. And three further examples are cited in the ſame work from the *Moheet*.

1. A PERSON'S falling from the roof of a houſe and killing another thereby.
2. DEATH occaſioned by the accidental fall of a brick, or piece of wood, from the head of a perſon.
3. A HORSE trampling a perſon to death, without the rider's deſigning it, or being able to prevent it.

Kutl bi ſubub, or accidental homicide by an intervenient cauſe.

ACCIDENTAL homicide by an intervenient cauſe (*Kutl-bâ-ſubub*) is ſtated in the *Hidâyah* to occur when a perſon digs a well, or ſets up a ſtone, in ground not belonging to him; and another is killed by falling into the well, or over the ſtone. In the *Mŏŏzmurât*, as quoted in the *Futâwâ-i Ââlumgeeree*, the accidental trampling of a man to death, by a led or driven quadruped, is alſo mentioned as an example of this deſcription of homicide, and many other inſtances are given in both works, under the head of *ſtructures upon the highway*; which, if they occaſion homicide, incur the ſame reſponſibility, as if conſtructed on private property without the owner's permiſſion.

Series of caſes ruled to be murder, manſlaughter, or other homicide.

THE foregoing will be ſufficient to explain the third, fourth, and fifth, ſpecies of homicide, when there may be no particular circumſtances to occaſion a minute diſtinction between them, and either murder, or manſlaughter. But it will be uſeful to notice a ſeries of caſes which appear, from the *Hidâyah*, or *Futâwâ-i Ââlumgeeree*, to have been ruled wilful homicide, incurring retaliation of death; or not wilful, and

therefore.

therefore ſubject only to the penalties of manſlaughter, or other involuntary homicide *.

1. If the homicide be perpetrated with a ſword, or any other edged weapon; ſuch as is commonly uſed to take away life; or with any ſharp inſtrument, calculated to produce the ſame effect, as a ſharp piece of wood, a ſharp ſtone, and the bark of cane; or with fire, which is equally capable of ſeparating the members of the body and occaſioning death; it is univerſally agreed to be wilful, as already quoted from the *Hidáyah* and *Futáwá-i-Álumgeeree*.

2. It is further ſtated, as a general principle, in the *Hidáyah*, that if a perſon wound another, ſo as to diſable him, and render him conſtantly bedridden until death; reſponſibility for the homicide is incurred by the perſon who inflicted the wound, to which the death is referred.

3. If a perſon be killed by a ſtroke given with the iron edge of an hoe *(Kulund)* the homicide is generally agreed to be murder *(Kutl-i-ûmd)*. It is alſo agreed to be manſlaughter *(Shibah i-ûmd)*, if the wooden handle only were uſed. But if the blow were ſtruck with the iron back of the inſtrument, according to Aboo Huneefah, it is manſlaughter; whereas in the opinion of Aboo Yoosuf and Imám Mohummud, it is equally wilful homicide, whether occaſioned by the iron back of an hoe, or by the edge of it †

4. If

* Theſe will be ſubſequently ſtated. But to render ſome of the examples more intelligible, it may be proper to note, in this place, that a compenſation for bloodſhed (denominated *Ákl* as well as *Diyut*) payable by the *Áakilah*, or perſons reſponſible, with the ſlayer, for the payment of this fine, is one of the legal penalties for every deſcription of unlawful homicide except murder. It may alſo become payable, in commutation for *Kiſás*, in caſes of wilful homicide, but it is then excluſively due from the offender himſelf; as it likewiſe is in every caſe of compoſition for murder.

† The author of the *Hidáyah* remarks that there is one report of Aboo Huneefah's having concurred in the opinion of his two diſciples: But that another, and more authentic report, ſtates his opinion to have been againſt the penalty of wilful homicide, unleſs a wound were inflicted.

4. If death be effected by pricking with a packing needle *(miſullah)* it is wilful homicide; but not according to the beſt authorities, if a ſmall needle, or any ſimilar inſtrument, be uſed, and it happen to kill the perſon pricked with it. Some are of opinion however that the ſlayer is liable to the penalty of murder, if the inſtrument, though ſmall, be applied to a part where it is likely to take away life.*

5. If a perſon kill another by biting him, it is recorded in the *Ajnás*, that retaliation for wilful homicide is not incurred; as *Kiſás* attaches only to acts done with an inſtrument which might be uſed for cutting the throat in conſecration of animals *(Zubḥ)*, which the teeth are not.†

6. If a perſon be killed by ſucceſſive blows with a whip, or ſtick, retaliation for murder is not due, according to the opinion of Aboo Huneefah.‡

7. It is recorded by Imám Mohummud, in the *Jámâ i-Sugheer*, that *Kiſás*, for wilful homicide, is incurred by throwing a perſon into a heated oven, and thereby occaſioning his death, whether fire be in the oven at the time, or not; and although the perſon may not die immediately, if he

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Mr. Hamilton, has tranſlated *Kulund*, in the caſe cited, *ſpade* or *ſhovel*; and the principle ſeems equally applicable to theſe inſtruments; but the recital correſponds more exactly with a hoe, which is alſo of more common uſe in India, and is underſtood to be the inſtrument referred to. It is added in the *Hidáyah* (but omitted in the tranſlation) that the ſame difference of opinion is reported to have been entertained by Aboo Huneefah, with reſpect to homicide occaſioned either by the wooden ſcale, or by the iron part, of a balance.

* *Khuzánut ibi Moſtieen*, quoted, in *F. Á.*

† *Kholáſut-ool Futáwá* quoted in *F. Á.* The reaſon aſſigned however appears applicable only to the doctrine of Aboo Huneefah; and not even to this, in every caſe; as homicide by fire is admitted by him to be wilful. Aboo Yoosuf and Imám Mohummud conſider it wilful, if the inſtrument be likely to kill, whether ſharp or not.

‡ *Kholáſut-oo futáwá* and comment on the *Mubſoot* quoted in *F. Á.* Kazee Nujm oó deen, in his tranſlation of this part of the *Futáwá-i-Álumgeeree*, remarks, that according to the opinion of Aboo Yoosuf, Imám Mohummud, and Shafiíee, homicide by ſucceſſive blows of a whip or ſtick, incurs *kiſás*.

continue

continue bed-ridden, and unable to walk till his demiſe *.

8. If a perſon, bound hand and foot, be put into a caldron, or other veſſel of boiling water, ſufficiently hot to produce bliſters on the body; and die in conſequence, either immediately or within a few days; retaliation of murder is due; but not if the perſon be able to walk about before his death †.

9. If a perſon be thrown into cold water, in the winter ſeaſon, ſo that his limbs be contracted, and he die in conſequence; or if he be ſtripped naked and expoſed to the winter cold upon the roof of a houſe, ſo as to occaſion his death; or if he be bound hand and foot and kept in ſnow till he expire; the fine of blood is due for manſlaughter ‡.

10. In like manner the fine of blood for manſlaughter is incurred, if an adult perſon, or child, be bound hand and foot, and expoſed to the ſun, without means of eſcape, till death enſue §.

11. If a perſon immerſe an infant or an adult, into water from which there is no proſpect of his eſcape by ſwimming; as for inſtance, into the ſea; he is not liable to retaliation for wilful homicide, according to Aboo Huneefah; (as no wounding inſtrument is uſed;) but the two diſciples and Shá-fiíee maintain that he is. All agree however that it is manſlaughter only, if there be not water enough to endanger life

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* *Moheet* and *Kázee Khán*, quoted in *F. Á.*

† *Zuheereeyah*, quoted in *F. Á.*

‡ *Zuheereeyah*, quoted in *F. A.* It is not ſpecified whether Aboo Yoosuf and Imám Mohummud conſider theſe inſtances to be murder or manſlaughter. But from analogy to other caſes, in which they differ from Aboo Huneefah, it may be inferred that they do not concur in the opinion ſtated.

§ *Khuzánut ööl Mooftéen*, quoted in *F. A.* The ſame remark is applicable in this, as in the laſt inſtance, on the probable difference of opinion between Aboo Huneefah and his diſciples.

without ſwimming; or if the perſon thrown into the water be capable of ſwimming, and his arms and legs be not bound, nor a weight tied to the body, and the place be ſuch that he may eſcape by ſwimming *.

12. The ſame difference of opinion exiſts between Aboo Huneefah and his diſciples, if the perſon were drowned from being repeatedly immerſed in water, till he died †.

13. If a perſon ſkilled in ſwimming be thrown from a boat into a river, or other confined piece of water, and ſink at once without ſwimming, Aboo Huneefah conſiders the fine of blood for manſlaughter to be due; but has declared neither retaliation of death, or the fine of blood, to be incurred, if the perſon ſo thrown remain above water and ſwim before he is drowned, although he ſhould have ſwam to ſave himſelf till he became exhauſted. Nor is any thing due for throwing a perſon into water, if it be uncertain whether he is drowned or not, until it be aſcertained that he is dead. It is the ſame if the perſon ſink two or three times, and appear above water again, if he be alive when laſt ſeen; and his condition afterwards be doubtful ‡.

14. If a perſon be thrown from the roof of a houſe, or from the top of a hill, or into a well, and be killed thereby; according to Aboo Huneefah, it is manſlaughter; and his two diſciples concur with him if there be probable means of eſcape; but if

* *Hid.* and commentary on the *Zeeádát*, quoted from the *Moheet* in *F. A.* See the arguments of Aboo Huneefah and his two diſciples, in ſupport of their reſpective opinions. Trans. of *Hid.* Vol. IV, p. 289. One reaſon aſcribed to the former, viz: "that homicide "by drowning being of rare occurrence, the deterring from it (by capital puniſhment) is of "leſs conſequence than with reſpect to prevalent offences," is omitted in the tranſlation. It is ſcarcely neceſſary to add that the whole of Aboo Huneefah's reaſoning in this, as in ſeveral other caſes, appears unſatisfactory and futile.

† *Zuheereeyah*, quoted in *F. A.*

‡ *Zuheereeyah* quoted in *F. A.* The ſeparate opinions of Aboo Huneefah and his diſciples are not ſtated; but the principles, upon which they differ in the preceding caſes, appear equally applicable to this.

there

there be no probability of ſaving life in ſuch caſes, they deem it wilful homicide *.

15. A perſon ſtrangling another is not liable to ſuffer death, according to the doctrine of ABOO HUNEEFAH, (though he is in the opinion of the two diſciples) unleſs he be notorious for having repeatedly committed this offence; in which caſe, if he have not ſhewn ſigns of repentance before he is apprehended, he ſhould be puniſhed with death as an example †.

16. If a perſon give poiſon to another and death enſue, there are three caſes. 1. When the giver forcibly, and with his own hand, puts the poiſon into the mouth of the deceaſed. 2. When he may have put the poiſon into the hand of the deceaſed, and compelled him to drink it. 3. When he may have given the poiſon into the hand of the deceaſed, and uſed no compulſion to make him drink it. Retaliation of murder is not incurred in any of theſe caſes. In the firſt and ſecond, the fine of blood is due from the *Âákilah*. In the third no penalty is incurred, whether the perſon, who drank the poiſon without compulſion, was aware of its being poiſon or not ‡.

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* *Mohcet*, quoted in *F. Â.*

† On the principle of *Seeáſut*, or diſcretionary puniſhment for the purpoſe of determent. The caſe ſtated is taken from the *Káfee* as quoted in the *F. Â.* It is confirmed by a caſe which terminates the book of *larceny* in the *Hidáyah*; but from the ambiguous meaning of the word *Khuſah* in the Perſian Verſion, has been erroneouſly tranſlated by Mr. HAMILTON, as a caſe of *homicide on provocation*. The Arabic original has the explicit term *Hunuk*; and the literal ſenſe of the paſſage is—"If a perſon kill another by ſtrangling, the fine of blood is due from the "*Âákilah* of the ſlayer according to ABOO HUNEEFAH. If however a man repeatedly commit "this act he muſt be put to death as an evil doer, and his iniquity be removed by deſtroying "him."

‡ *Zukheerah*, quoted in *F. A.* The *Fatáwá* of KÁZEE KHÁN contains two caſes to the ſame effect.—Firſt, if the deceaſed have taken the poiſon into his own hand, and eat it, or drank it, without knowing it to be poiſon; in which caſe neither retaliation or the fine of blood is incurred: but the poiſoner ſhould be impriſoned and chaſtiſed. Secondly, if the poiſon be forcibly put into the mouth of the deceaſed by another perſon, in which caſe the fine of blood is due from the *Âákilah* of the poiſoner." Several other authorities are cited by MOULAVEE SIRÁJ ÚL HUK, in his Treatiſe upon *Zázér* and *Seeáſut*. The author of the *Mohcet* obſerves that ABOO YOOSUF and IMÁM MOHUMMUD

17. If a perſon bind another, and keep him confined in a houſe until he die from hunger; Imám Mohummud declares him liable to corporal puniſhment; and the fine of blood to be payable by his *Âákilah;* but deciſions are paſſed according to the opinion of Aboo Huneefah, that neither *kiſás* or *diyut* is incurred *.

18. If a perſon be put alive into a grave, and kept there until he dies, according to Imám Mohummud the murderer is liable to ſuffer death in retribution; but on the opinion of Aboo Huneefah judgment is given for the price of blood only, payable by the *Âákilah* †.

19. If a perſon bring another into his houſe, and put a wild beaſt into the room with him; and ſhut the door upon them; and the beaſt kill the man; neither *kiſás* or *diyut* is incurred. And it is the ſame if a ſnake, or ſcorpion, be put into the houſe

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Hummud, concur with Aboo Huneefah, in not conſidering homicide by poiſon to be *Kutl-i-ûmd*, and that the reaſon why they do not infer a deſign to kill, as in other caſes wherein they differ from the latter, is that poiſonous drugs are ſometimes given, in ſmall quantities, medicinally; and although the giving a large quantity of poiſon might evince an intention to kill, it is poſſible the perſon who gave it, may not have been aware that the quantity was exceſſive; wherefore evidence of wilful homicide is wanting, and the caſe is ruled to be *Shibah-i ûmd* only. It is added in the *Moheet* however, that the Imám may inflict puniſhment (*Seeáſut*) of death upon a perſon who makes a practiſe of giving poiſon. *Tuhávee* alſo, in his *Futáwá*, declares, that if a perſon mix poiſon with food, and give it to another who eats it, without knowing it to be poiſonous, and dies, the giver of the poiſon ought to ſuffer death, as *Seeáſut*. And the author of the *Yunabeeâ* ſtates, that ſome lawyers are of opinion, the giver of poiſon incurs *kiſás*, if it occaſion death, as it operates like fire in ſeparating and deſtroying the members. Siráj-ööl Huk concludes, upon the whole of the authorities quoted by him, that according to the uniform opinion of Aboo Huneefah and his diſciples, the killing by poiſon, in whatever manner it be given, is not deemed wilful homicide; that the fine of blood is payable, as for manſlaughter, if the poiſon be compulſively put by another into the mouth of the deceaſed; but that if the deceaſed took the poiſon, into his own hand, and eat or drank it without compulſion, though he did not know it to be poiſon, the giver is liable to diſcretionary puniſhment only. He adds that in the preſent times the opinion of *Tuhavee*, for exemplary puniſhment, ſhould prevail: as the mixing poiſon with food is a heinous offence; ſuch as is declared puniſhable with death for the ſecurity of mankind.

* *Zubeereeyah*, quoted in *F. A.* Kazee Nujm-öö-'deen remarks on this caſe, that it is incumbent on the magiſtrate to inflict exemplary puniſhment.

† *Zubeereeyah* quoted in *F. A.* Kazee Nujm-öö-'deen adds, in explanation, becauſe the homicide is not committed by a wounding inſtrument.

with

with a man; or if they were there before, and ſting him to death. But if the ſufferer be a child the price of blood is payable *.

20. It is recorded in the *Mŏŏntuka*, from ABOO YOOSUF, that in the caſe of a perſon's throwing another, bound hand and foot, to be devoured by wild beaſts, ABOO HUNEEFAH ſaid, the offender was not liable to *kiſás* or *diyut;* but ſhould be corporally chaſtiſed and impriſoned 'till he repent; and ABOO YOOSUF added his own opinion, that the impriſonmet in ſuch a caſe ſhould be for life †.

IN the whole of the examples above cited, it muſt be aſſumed that the wound, blow, or other cauſe of death, proceeds from a ſane, and adult perſon; that the homicide is unlawful; and that the blood of the perſon ſlain was under legal protection, from his or her being the ſubject of a Moſulman ſtate; and reſident within its dominions ‡. With reſpect to the ſtated judgment of retaliation for homicide, it muſt further be ſuppoſed that no legal defect or doubt (*Shŏŏbhah*) intervenes to bar the ſentence of *Kiſás*, and that it is demanded by the heirs of the ſlain; as will be more fully noticed, after ſpecifying the legal penalties for the ſeveral deſcriptions of unlawful homicide.

Circumſtances to be aſſumed in the examples cited.

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* *Khuzánut ŏŏl Mŏŏfteeyen* quoted in *F. Á.*

The *Kazee ŏŏl Kŏŏzát* obſerves, on this caſe, that neither retaliation or the fine of blood is incurred when a man is killed, becauſe the man might repel the beaſt, if he had courage to defend himſelf. But a child having no power to reſiſt, his death is aſcribed to the original author of it, and incurs the legal penalty.

† *Moheet* quoted in *F. Á.*

‡ *Hid.* B. *Jináyát.* Ch. II. On what occaſions retaliation of homicide. B. *Hujr*, or Inhibition, reſpecting infants and lunatics. And B. *Siyur*, C. VI. concerning *Mŏŏſtámins*, or protected foreigners. The Britiſh dominions in India, though really independent of any Mohummudan Government, are conſidered to form part of a Moſulman empire, from the nominal acknowledgment of the King of *Dehly*, in whoſe name the coin is ſtill current. On this account, as well as from the ſanctioned adminiſtration of Moſulman law, and the appointment of *Kázees* for the performance of part of the duties preſcribed by it, the territory held by the Eaſt India Company is admitted to be *Dár ŏŏl Iſlám*, the ſeat of peace; in oppoſition to a country not ſubject to Mohummudan rule, which is called *Dárŏŏlhurb*, the ſeat of hoſtility. See commentary on the *Sirájiy,yah* by SIR W. JONES, and SALE's Prel. Diſc.

Penalties for the ſeveral deſcriptions of unlawful homicide. And firſt of *Kutl-i-ûmd*.

THE penalty for *Kutl-i-ûmd*, or murder, is *Kiſâs* (retaliation), unleſs the heirs or repreſentatives of the ſlain forgive or compound the offence. The murderer is alſo excluded from inheritance to the property of the ſlain. The right to demand retaliation for wilful homicide is founded on a text of the *Korân*, as well as upon a tradition from the prophet. The right of pardon and compoſition are alſo derived from the ſame authorities. And a tradition is cited for excluding the ſlayer from inheritance to the eſtate of the ſlain in all caſes of unlawful homicide, except that ariſing from an intervenient cauſe, which is excepted from the general rule of excluſion as not attaching to any perſon the immediate act of bloodſhed. Whether this diſtinction be well founded, or not, the object of the general principle of forfeiture of heritage, in caſes of illegal homicide, is obvious.* The retaliation allowed for murder is ſtated to have two ends in view. Firſt, ſatisfaction to the heirs of the ſlain; either by retaliating blood for blood on the perſon of the offender; or by receiving a pecuniary compenſation for the injury done by him: Secondly, the determent of others, by exemplary puniſhment, from committing the ſame crime. The latter, however, though the true, and only juſtifiable, motive for capital puniſhment, by human laws, is a ſecondary object of the Moſulman law of *Kiſâs*; which conſiders the private injury in caſes of homicide, unaccompanied with highway robbery, or other violent breach of the peace, to be of greater magnitude than the public detriment; and conſequently leaves the demand of retaliation, with liberty of forgiveneſs,

* SIR W. JONES in his remarks upon homicide, as one of the impediments to ſucceſſion, under the Moſulman law of inheritance, obſerves that, "If a man were to dig a pit, or fix a large ſtone, "on the field of another, and the owner of the field were to be killed by falling at night into "the pit, or running againſt the ſtone, the doer of the illegal act, which was the primary occa-"ſion (but not the cauſe) of the death, muſt pay the price of blood; but would not, it ſeems, be "generally diſabled from inheriting; he ought, one would think, to be incapable of ſucceeding "to the property of the deceaſed, whom he deſtroyed, and whom he might have meant to deſ-"troy by ſuch a machination." *Commentary* on *Sirâjiy,yah*, p. 62. But without evidence of the intention

forgiveneſs, or compoſition, to the feelings and diſcretion of the legal repreſentatives of the perſon murdered.* SHAFIÎEE maintains that *Kuffárah*, (expiation by emancipating a Moſulman ſlave, or faſting for two months) is alſo requiſite, in caſes of murder, on account of the ſin attending ſo heinous an offence; and *a fortiori* as it is enjoined by the law for the leſs criminal ſpecies of homicide. This argument however is not admitted by ABOO HUNEEFAH and his diſciples, who contend for an adherence to the text of the *Korán;* and conſidering the ſin of murder too great for expiation, deny the inference of its neceſſity or propriety, on conviction of this crime, from its being impoſed by the law in atonement for offences of leſs magnitude.†

Penalties for *Shibah-i-úmd*, *Kutl-i-khutá* and *Ka,eem mokam-i-khutá*.

EXPIATION, and excluſion from inheritance, are the preſcribed penalties for *Shibah-i-úmd*, or manſlaughter; and for the two ſpecies of homicide by miſadventure, denominated

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intention to deſtroy, or of very culpable neglect, the forfeiture of inheritance does not appear, in any caſe, to be ſtrictly equitable. In the preceding page of the commentary, homicide, under the Mohummudan law, is defined to be "either *with malice prepenſe*, and puniſhable with death; "or *without proof of malice*, and expiable by redeeming a Moſulman ſlave, or by faſting two "entire months, and by paying the price of blood; or thirdly, it is *accidental*, for which an ex-"piation is neceſſary." In this definition the term *malice* muſt not be underſtood in the ſenſe it bears, under the Engliſh law, to diſtinguiſh murder from manſlaughter; viz. "not ſo properly "ſpite or malevolence to the deceaſed in particular, as any evil deſign in general; the dictate "of a wicked, depraved, and malignant heart." (BLACKSTONE, Vol. IV. p. 198. And FOSTER p. 256.) SIR W. JONES further remarks that "malicious homicide, or murder (for, by the "beſt opinions, the Arabian law on this head, nearly reſembles our own) is committed when a "human creature is unjuſtly killed with a weapon, or any dangerous inſtrument likely to occaſion "death." But though in this reſpect the better conſtruction of the Mohummudan law of *Kutl-i-úmd* may correſpond, in ſubſtance, with the Engliſh law of *murder;* the former differs eſſentially from the latter in regarding chiefly the proof of an intention to kill, whether deliberate or ſudden; without any allowance for unpremeditated, though unlawful, homicide, committed in the heat of paſſion, upon ſtrong provocation; which (to borrow the words of FOSTER) "the "benignity of our law imputeth to human infirmity;" and which therefore is admitted to extenuate the offence, from the crime of murder, to that of manſlaughter. A paſſage in Mr. HAMILTON's tranſlation of the *Hidáyah*, at the concluſion of the Book on *larceny*, which appears to contradict this remark, has been already explained to be a miſtake of the Tranſlator.

* Vide Book of *Jináyát* in *Hid.* and *F. A.*

Alſo SALE's Trans. of the *Korán*, C. 2 and 17, and his Prel. Dis. p. 139.

† See Trans. of *Hid.* Vol. IV. p. 273.

Kutl-i-khutá,

Kutl-i-khutá, and *Káeem mokám-i-khutá*; beſides *Diyut*, or the fine of blood, payable by the *Áákilah* of the offender. * The heavy fine *(Diyut-i Moghulluzah)* for manſlaughter is one hundred female camels of four claſſes, viz. twenty five of one year, and the ſame number of two, three, and four years of age, reſpectively. If adjudged to be paid in money it is ten thouſand *dirms*, or one thouſand *deenars*.† The fine for homicide by miſadventure is alſo one hundred camels, but of the following deſcriptions, twenty males and twenty females of two years; and the ſame number of three and four years reſpectively. The fine in money is the ſame as for manſlaughter. Theſe fines, however, are for the death of a man. Thoſe for a woman are limited to half the amount. But there is no difference between the fine for a Moſulman and for a

Fine of blood for manſlaughter

And for homicide by miſadventure.

* The *Áákilah* are, literally, thoſe reſponſible for the *Ákl*, or *Ma,ákulah*, of the ſame import with *Diyut*; and meaning the fine or compenſation for bloodſhed. The *Aákilah* of a ſoldier, or other perſon enrolled in the public ſervice, are thoſe regiſtered with him as his aſſociates. If the party be not ſo enrolled, his family and tribe are conſidered his *Áákilah* as being his co-adjutors. Perſons reſident in the ſame place are alſo reſponſible for each other, if there be not a ſufficient number of the two former deſcriptions of *Áákilah* to make good the fine, under the preſcribed limitation of four *dirms* (leſs than one rupee) each, including an equal contribution from the offender himſelf. Women and Children are exempted from reſponſibility as *Áákilah*, from their not being able to aſſiſt or reſtrain; and the reaſon ſtated in the *Hidáyah* for involving others in the fine is, that the offender (who not being convicted of wilful homicide, would be too ſeverely puniſhed if perſonally made anſwerable for the whole fine) is ſuppoſed to have committed his offence by the aid, or through the neglect, of his aſſociates; as altho' they may not have ſupported him, they might, if vigilant, have reſtrained him. See further proviſions reſpecting the levying of fines for blood, and reſponſibility of the *Áakilah*, in the *Hidáyah*, B. *Máákil*, Trans. Vol. IV, p. 448. It does not appear however that theſe proviſions have ever been judicially enforced, againſt the kindred or connections of offenders, in *Hindoſtan* or *Bengal*; though *Futwás* have been given, and ſentences paſſed, for the payment of fines by the *Áákilah*, in purſuance of the letter of the law; the ſpirit of which, on this point, is contended by ſome to have excluſive application to *Arabia*: where the inhabitants were divided into tribes and cloſely united by the obligation of mutual ſupport.

† There is ſome doubt upon the exact weight and value of the legal *dirm* and *deenár*. But on a general calculation of 14 *Keerát*, each weighing 5 barley-corns, being 1 *dirm*; and 5 *dirms* being equal to a rupee of the ſame weight; the ſtated fine for homicide would be exactly 2000 rupees. Mr. HAMILTON's valuation of the *dirm* and *deenár*, referred to in a former note, would make it 350 £. The award of *Diyut*, in caſes of involuntary homicide, is founded on a text of the *Korán*. V. SALE's Trans. Ch. 4, p. 72 and notes. But the amount is not fixed in the written law; and the regulation of it at one hundred Camels, by the oral law, is ſaid to be derived from MOHUMMUD's grandfather, ÂBD ŏŏL MŏŏTULIB, having redeemed ÂBDŏŏL-LAH, the prophet's father, from ſacrifice, by an offering of one hundred Camels. See note in SALE's Trans. p. 369.

Zimmee,

Zimmee, or infidel ſubject.* In *Kutl-ba ſubub*, or accidental homicide by an intervenient cauſe, expiation is not incumbent; nor is excluſion from inheritance incurred; according to the doctrine of ABOO HUNEEFAH and his diſciples; (though SHAFIÎEE maintains an oppoſite opinion); as thoſe penalties are reſtricted to the direct offence of bloodſhed, which, in this caſe, is not conſidered to have been committed. The fine of blood is however payable by the *Âákilah* of the wrong doer, as a compenſation for the injury done by him; and on account of his tranſgreſſion in unlawfully digging a well, or placing a ſtone, or other means of homicide, upon land not his own property.†

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* What is ſtated reſpecting fines, is according to the opinion of ABOO HUNEEFAH and ABOO YOOSUF. IMÁM MOHUMMUD held a different opinion concerning the deſcription of camels, to compoſe the fine for manſlaughter: and a further difference of ſentiment is quoted in the *Hidáyah* from SHAFIÎEE, both reſpecting the fine of camels for homicide by miſadventure; and regarding the money fine, in *dirms*, as conſiſting of twelve, inſtead of ten thouſand. V. *Hid.* Ch. *Diyut*, Trans. Vol. IV, p. 330.

† SHAFIÎEE contends that the perſon who occaſions the death of another by an intermediate cauſe is equally a ſhedder of blood, as in caſes of homicide by miſadventure; and ſhould therefore be liable to the ſame penalties. See Trans. of *Hid.* Vol. IV. p. 277. In the paſſage quoted in a former note from SIR W. JONES's commentary on the *Sirájiy,yah*, the doer of the illegal act, which occaſions this ſpecies of accidental homicide, is inadvertently mentioned as perſonally bound to pay the price of blood; and it is not ſpecified by whom the fine of blood is payable in other deſcriptions of involuntary homicide. The *Diyut* is however expreſsly ſtated in the *Hidáyah* and *F. Âalumgeeree* to be payable by the *Âákilah*, where there are any, for every kind of unlawful homicide eſtabliſhed by proof (viz. independently of the ſlayer's acknowledgment which is obligatory upon himſelf only) except murder; the legal penalty for which is *Kiſás*; and if this be commuted to, or compounded for, the price of blood, it is demandable from the murderer alone, or his property. When there are no known *Âákilah*, or an inſufficient number for the payment of the fine of blood, according to the preſcribed rate of four *dirms* each, the ſlayer is likewiſe reſponſible for the *diyut* in caſes of involuntary homicide, if he be a *Zimmee*; and alſo according to one report of ABOO HUNEEFAH's opinion, if he be a Moſulman. But the prevalent doctrine is, that, in a Mohummudan community, when the involuntary ſlayer is a Moſulman, and the fine of blood due to the heirs cannot be recovered from his *Âakilah*, it is payable from the *Bŕt ŏŏl mál*, or public treaſury; on the principle that all the members of ſuch a community are aſſociates, and co adjutors to each other; as well as becauſe the property of a perſon dying without heirs devolves to the treaſury of the ſtate. See Trans. of *Hid.* Vol. IV, p. 457 and 463. The author of the *Kiſáyah* ſupports the opinion laſt noticed on the authority of the *Záhir oo' ruwáyát*; but the law officers of the *Nizámut Âdálut* do not conſider it applicable to the Britiſh poſſeſſions in India; and in a recent *Futwá*, (recorded 9th July 1807,) have declared a Moſulman, who was convicted of two homicides by miſadventure, liable to the *diyut* for each, "payable by himſelf, if he have no *Âakilah*." He is further declared ſubject to diſcretionary puniſhment (*Seeáſut*) on conſideration of the circumſtances of the caſe; and of his inability, from want of aſſets, to make good the fine of blood.

Confeſſions, in charges of homicide, and other criminal accuſations, how far admitted for conviction.

In charges of homicide, as well as in other criminal accuſations, before a Mohummudan court of judicature, the greateſt weight is given to the confeſſion of the party accuſed, whether made before the court, or elſewhere, provided it be voluntary, and by a perſon of ſane mind and mature age.* But to found a conviction of murder, it is neceſſary that the confeſſion expreſsly declare the blow, wound, or other cauſe of homicide, to have been wilful.† It is alſo a rule that the whole of what is ſtated in explanation be taken as part of the confeſſion.‡ In the *Zeeádát* of Imám Mohummud it is ſtated to be a general principle; that "whoever con-"feſſes an act which ſubjects him to a legal penalty, and ſub-"ſequently offers a plea, to exonerate himſelf from the "penalty, muſt eſtabliſh ſuch plea by proof. But if he de-"ny that which occaſions the penalty, his denial is admitted." This paſſage is open to ambiguous conſtruction; and from the caſe to which it is applied (the affirmative anſwer of the prophet to a queſtion from Sâd Ibn-i-Îbádah, whether, on finding a man with his wife, he ſhould defer killing the adulterer till four witneſſes were preſent to prove the adultery) might be underſtood to require proof of a plea of juſtification in all caſes of acknowledged homicide. The author of the *Humádeeyah*, who cites the *Zeeádát*, however, deduces from the above quotation, a certain inference that the

Rule that the whole of what is ſtated in explanation be taken as part of the confeſſion.

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* *Hid.* B. *Ikrár*, or acknowledgment.

† The following caſe is quoted from Kazee Khán in the *F. Á.* "A perſon confeſſes, "ſaying, *I ſtruck ſuch a one with a ſword and thereby killed him.* Aboo Yoosuf declares this "confeſſion to eſtabliſh involuntary homicide only; as the party does not acknowledge that he "ſtruck wilfully." In the chapter of miſcellaneous caſes, which concludes the *Hidáyah*, a general confeſſion of homicide, without its being ſpecified as *wilful*, is noticed as incurring retaliation; but this is not deemed authoritative; nor the diſtinction between *Hudd* and *Kiſás* on which it is founded. See trans. of *Hid.* Vol. IV. p. 571.

‡ This is inferrible from a caſe in the *Moheet*, cited in the *F. Á.* as follows—"If a perſon con-"feſs that he has ſtruck ſuch a one with a ſword, and thereby killed him; or that he brought a "knife and killed ſuch a one; and then ſay it was not his intention to have killed the deceaſ-"ed, but another perſon; *kiſás* is prevented by ſuch declaration." It is, of courſe, ſuppoſed that there is no proof of wilful homicide independent of the confeſſion.

ſtatement

ſtatement of an act, under "circumſtances, which prevent "its being penal, is a virtual denial of the cauſe of penalty;" and this concluſion is undoubtedly juſt and rational when there is no evidence againſt the acknowledger of the act, beſides his own ſtatement of the caſe.*

Evidence required to eſtabliſh a charge of murder, or other homicide, when denied by the accuſed.

If the priſoner plead not guilty to a charge of murder, the evidence requiſite to eſtabliſh it, ſo as to warrant a ſentence of *Kiſás*, is the poſitive teſtimony of two competent eye-witneſſes; of aſcertained or apparent credit. The teſtimony of ſlaves, deemed the property of their maſters, is not admiſſible in any caſe; as their ſtate of bondage precludes them from exerciſing any act of authority; which the delivery of evidence is conſidered to be. The teſtimony of women is

* There appears to be ſome ambiguity, if not inconſiſtency, in the caſes of confeſſions, which occur in different books of Mohummudan law. In thoſe quoted from *Kâzee-Khán* and the *Moheet*, the circumſtances of the caſes are evidently conſidered to form an eſſential part of the confeſſion; and the general inference in the *Humádeeyah* is clearly to the ſame effect. Yet the following three caſes are cited, in SIRÁJ-ŏŏL-HUK'S treatiſe on *Tâzeer*, from the *Khuzánutŏŏruwáyát*. 1. If a perſon, killing another, plead that the deceaſed aſſaulted him, and prove it, neither *Kiſás*, *Diyut*, or *Tâzeer*, is incurred. 2. If he have no proof of the plea of aſſault, and the ſlain were a known aſſailant *(Mokábur) Kiſás* is barred; but the fine of blood is due. 3. If there be no proof of the plea, and the ſlain were not a known aſſailant, but, on the contrary, a man of peaceable character, *Kiſás* is incurred. A caſe ſimilar to the ſecond, is alſo quoted from the *Ítábeeyah*, with an addition, that *Íbn-iziyád* held nothing to be due from the ſlayer in ſuch caſe. The following further inſtance is ſtated in the *Humádeeyah*. "The "body of a perſon killed is found in a houſe; and the owner of the houſe alleges that "the deceaſed was a thief who came to rob him, and was therefore killed by him. "It is reported from ABOO HUNEEFAH, that in this caſe, if ſigns of the deceaſed "having been a thief be found; or if he were notorious for theft; the owner of the "houſe is not reſponſible for the homicide. But other reports ſtate, that *Kiſás* only is "barred; and the fine of blood is due." In the laſt caſe, however, the proof of the homicide does not reſt entirely upon the confeſſion of the party. And perhaps in the examples quoted from the *Khuzánutŏŏ-ruwáyát* the fact of the homicide may be underſtood as eſtabliſhed independently of the ſlayer's acknowledgment. In a recent *Futwá* delivered by the Law Officers of the *Nizámut Ádálut*, relative to a priſoner named GHOSOO, who confeſſed having killed his wife; but ſtated in vindication that he found her in bed with an adulterer; they obſerved, "In this caſe there are two opinions. One that the fact pleaded in juſtification is not admiſſible without proof: this is *Kiyás*, or the apparent conſtruction of the law. The other, founded on *Iſtahſán*, or a more profound or approved conſtruction, is, that the plea is admiſſible without evidence. The latter opinion is preferred; and the ſituation in which the priſoner found his wife affords a preſumption of adultery, ſufficient to bar *Kiſás*.

alſo

alſo not admitted to prove a charge of wilful homicide, on the ground of a tradition, that in the time of the prophet, and his two immediate ſucceſſors, it was an invariable rule to exclude the evidence of women in all caſes inducing *Hudd* or *Kiſás*. In caſes of homicide not wilful, as in all other caſes wherein ſpecific puniſhment, or retaliation, is not incurred, the evidence of one man and two women is received, as equivalent to that of two men. But if the perſon accuſed be a Moſulman, it is requiſite that the witneſſes againſt him be alſo of the ſame religion. The teſtimony of *Zimmees*, or infidel ſubjects, with reſpect to each other, is admiſſible, although they be of different religions. The evidence of a Moſulman is alſo valid againſt a *Zimmee;* and the teſtimony of both has validity againſt an infidel *Mŏŏſtămin*, or protected ſtranger. But the evidence of the latter is invalid againſt any perſon except one of his own countrymen. alſo a protected alien. Convicted ſlanderers, atrocious criminals, and perſons of known bad principles or character, are not admitted to be ſufficient witneſſes, from want of credit. And the teſtimony of near relations or connections, ſuch as father and ſon, grandfather and grandſon, huſband and wife, maſter and ſlave, in favor of each other, is not admiſſible, in conſideration of their relative intereſts.*

In what caſes of eſtabliſhed wilful homicide, *Kiſás* is incurred.

When a charge of unlawful and wilful homicide is legally eſtabliſhed againſt a ſane and adult perſon, either by his or her confeſſion, or by the requiſite evidence, retaliation of death is equally incurred, whether the party ſlain were an infidel or a *Mŏŏſlim;* the ſlave of another (viz. not the ſlayer's) or free; a woman or man; an infant or of mature age; ſound in body and mind; or ſick, diſmembered, blind, lame

* The nature of this tract does not admit of the rules of evidence being ſtated more at length. But they are detailed in a chapter of the *Hidáyah*, entitled *Shuhádut*, or evidence.

See Trans. of *Hid.* Vol. IV, p. 665.

or

or infane; provided, in all caſes, that the blood of the deceaſed was under protection of the law, from permanent reſidence within the territory of a Moſulman ſtate, in ſubjection to its authority.* But under this proviſion the murder of an infidel *Mŏoſtamin*, whether by a *Moſulmán*, or *Zimmee*, does not incur retaliation of death.† Neither is it incurred by a parent, or by any paternal or maternal anceſtor, for the murder of his or her child, or other lineal deſcendant; as well in conſequence of a declaration by the prophet that "retaliation muſt not be executed upon the parent for his "offſpring," as in conſideration of the ſlain having derived his (or her) exiſtence from the ſlayer.‡ Nor is a maſter liable to *Kiſás* for the murder of his own ſlave; or the ſlave of his child; as the murderer himſelf would be the perſon legally entitled to demand retaliation in the former caſe; and in the latter, as in every caſe where a child may poſſeſs the right of retaliation for death againſt his parent, the enforcement of ſuch right is prevented by the regard due to parentage. The demand of retaliation is further barred, if the perſon murdered be the joint ſlave of the murderer, and of others; the right failing in proportion to the murderer's ſhare, and retaliation of death not admitting of being inflicted in part only.* The ſame principle is applicable if the perſon killed be a ſlave

In what caſes it is not incurred.

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* See Trans. of *Hid.* Vol. IV. p. 279. The inſtances ſtated are alſo cited in the *F. Á.* from KÁZEE KHÁN; the *Kunz*; *Kholáſah*; *Moheet*; and *Káfee*. SHAFIÎEE differs from ABOO HUNEEFAH, and his Diſciples, in maintaining that a Moſulman is not to be put to death for killing a *Zimmee*; nor a freeman for killing the ſlave of another perſon. His arguments, and thoſe oppoſed to him, are detailed in the *Hidáyah*, Vol. IV. of Trans. p. 279 280.

† Trans. of *Hid.* Vol. IV. p. 281. Alſo the *Tubeen* quoted in the *F. Á.* But KÁZEE NUJM ŏŏ' DEEN remarks that the fine of blood may be adjudged in ſuch caſes.

‡ *Hid.* and *Kafee* quoted in *F. Á.* The fine of blood however is expreſsly declared due from the property of the murderer. See Trans. of *Hid.* Vol. IV. p. 350.

* Trans. of *Hid.* Vol. IV. p. 282. With reſpect to ſlaves however, it muſt be remembered, that thoſe referred to in the Mohummudan law, and in a ſtrict view of it alone conſidered to be legal ſlaves, are infidels conquered and made captive in war. They are held to be the property of the captors by right of conqueſt. But a reciprocal right is not admitted, with reſpect to *Moſulmáns*, or *Zimmees*, conquered by infidels. Nor can any other title legalize the ſlavery of a Freeman, whether Moſulman or Infidel; ſo as to bring it within the proviſions of the Mohummudan criminal law.

Caſes of homicide committed by two or more perſons.

appropriated by the owner to the public ſervice.* If a murder be committed by two or more perſons, of whom any one is exempt from *Kiſás*, ſuch as by the father of the ſlain, and a ſtranger; or by an adult perſon and a minor; judgment of retaliation is barred againſt the whole; as it alſo is if two perſons jointly commit homicide, one with an iron weapon (being an inſtrument of murder), the other with a ſtaff, or other inſtrument of manſlaughter. In this caſe a moiety of the fine of blood is due from the perſon who ſtruck with the iron weapon; and the remaining half is payable by the *Áákilah* of the perſon who ſtruck with the ſtaff.† It is ſtated in the *Hidáyah*, "If a "number of perſons unite in murdering a man, analogy ſug- "geſts that one of them only is to be put to death in retaliation; "as equality is indiſpenſable in the infliction of retaliation; "and between ten perſons (for inſtance) and one perſon, there "is no equality. The whole are however liable to ſuffer "death; analogy being in this inſtance abandoned for a more "approved conſtruction of the law; becauſe it is related that "when, on a certain occaſion, ſeven of the inhabitants of *Su-* "*nâ,áh* murdered a man, ÔMUR decreed retaliation upon all "the ſeven; ſaying, if the whole people of *Sunâ,áh* had aſſiſted "in the murder, I ſhould certainly have ſlain them all; and "alſo becauſe murder is moſt frequently committed by force; "and retaliation has been ordained for the purpoſe of deter- "ment, and a warning to the unwary. Each individual con- "cerned is, therefore, as if he alone had committed the act; "and conſequently equality is certified, and retaliation incur- "red; that the lives of mankind may be in ſecurity."‡ A quotation from the *Káfee* is given in the *F. Áálumgeeree* to the ſame effect. But in the *Jámâ ŏŏ' rumooz* it is quoted from the *Zá-*

* *Bundah-i Wukf. Kholáſah*, quoted in the *F. Á.*

† *Tuhzeeb* and *Shurh-i-Mubſoot*, quoted in the *F. Á.* It is further ſtated in the *Hidáyah* (ſee Trans. Vol. IV. p. 350.) that "in all wilful offences, where retaliation is remitted becauſe of "a doubt, a fine is due from the property of the offender."

‡ Trans. of *Hid.* Vol. IV. p. 302, with corrections.

hidee,

hidee, that the rule for retaliation of death, upon ſeveral perſons committing a murder, is applicable only to ſuch as may have given a mortal wound to the ſlain; and therefore accomplices employed in watching, or even thoſe who aſſiſt in holding the hands and feet of the perſon murdered, are not liable to *Kiſás*. But it is added by KÁZEE NUJM ŏŭ' DEEN that they may be puniſhed, in any mode of exemplary puniſhment *(Seeáſut,)* at the diſcretion of the magiſtrate. The following caſe is cited from the *Zukhcerah* in the *F. Âalumgeeree.* "If a perſon wound another in the belly, ſo as to bring his entrails out; and afterwards another cut off the head of the wounded perſon; the latter is conſidered the ſlayer; and liable to *Kiſas*, if the homicide be wilful; or to the fine of blood, if involuntary; and the perſon who gave the belly wound is liable only to the eſtabliſhed fine for ſtabbing the belly, viz. one third, or two thirds, of a complete fine; according as the ſtab may be entirely through the body, or not. But it is ſuppoſed, in the caſe ſtated, that the wounded perſon lived, or was capable of living, a day after receiving the wound in his belly. If, on the contrary, there be no poſſibility of his living after his receiving the belly wound, and he be at the point of death, when beheaded; the homicide is imputed to the perſon who gave the belly wound; incurring *Kiſas*, or *diyut*, as it may be wilful or otherwiſe; and the perſon who ſtruck off the head is liable to *Tázeer.*" It is further quoted from the *Kholáſah*, that "if a perſon give a mortal wound, from which there is no hope of life; and a ſecond perſon give a ſubſequent wound; the former is conſidered the ſlayer, if the two wounds have been given ſucceſſively; or both perſons are deemed to have killed the deceaſed, if the two wounds were given at the ſame time. In like manner, if one perſon have given ten wounds; and another perſon one wound; (ſuppoſing all the wounds to have contributed to the homicide;) both are held to have been principally concerned." A quotation from the *Mŏŏntuka* is likewiſe cited in the *F. Âalumgeeree*, from the *Zukheerah*, that "if a man's throat be cut through, except a ſmall part of the

the wind-pipe; and when he has a little life remaining, another perſon give him a finiſhing ſtroke; the latter is not ſubject to *Kiſás*, becauſe the deceaſed was virtually killed by the firſt wound; inſomuch that if his ſon had died, leaving his father in the expiring ſtate deſcribed, the ſon would be conſidered the legal heir to his father, as having ſurvived him."

By whom retaliation for murder is demandable.

RETALIATION for murder is conſidered to be the right of the perſon murdered; and to devolve to his legal heirs, who repreſent him in the exaction of it. This is declared in the *Hidáyah*. And KÁZEE KHÁN ſtates, to the ſame effect, that the perſons entitled by law to ſucceed to the eſtate of the ſlain, are alſo entitled to retaliation for his death. This right therefore appertains to the huſband, and to the wife, as well as to the heirs of blood; and the ſame rule is applicable to the right of *Diyut*.* If the heir to the ſlain be a minor, or ideot, and his (or her) father be living, the latter is entitled to demand or compound retaliation. But an appointed guardian, not being the father of the minor or ideot, is not ſo empowered; and the reaſon given in the *Hidáyah* is, that "the end of retaliation is relief and ſatisfaction to the mind; which are reſtricted to the father, as he, becauſe of his near relationſhip, and tender affection, is the ſubſtitute of his children with reſpect to their feelings."† Where part of the heirs are minors, and part adult, ABOO HUNEEFAH is of opinion that the adult heirs alone, or in conjunction with the ſovereign or his delegate, on the part of the minors, may demand *Kiſás*: but ABOO YOOSUF and IMÁM MOHUMMUD maintain that retaliation of death cannot be demanded, in ſuch caſe, till the minor heirs attain maturity. The ſame difference of opinion exiſts in the caſe of one or more of the heirs entitled to require *Kiſás* being an ideot, or inſane,

* SHÁFI'EE and MÁLIK deny the right of the huſband, or wife, to demand retaliation, or the fine of blood, for the murder of each other. See their argument, and that oppoſed to them, in Trans. of *Hid.* Vol. IV. p. 300.

† Trans. of *Hid.* V. IV. p. 287, with correction.

or

or abſent; as well as in the caſe of a murdered ſlave being the joint property of a minor and an adult. * When all the heirs are minors, ſome lawyers conſider the ſovereign, or his delegate, to have the power of enforcing *Kiſás*, in their behalf; whilſt others think it ſhould be deferred till one or more of the minors become of age. † It is however generally agreed, that if the murdered perſon leave no heir or legal repreſentative, the ſovereign, and his deputy the *Kázee*, are authorized to enforce retaliation of death ‡ If a ſlave be murdered, the maſter *(Moulá)* is entitled to demand *Kiſás;* unleſs the deceaſed had been partly emancipated, and was ſlain before he had paid the ranſom for his complete liberation; in which caſe the maſter, who has only a partial right, is not authorized to demand retaliation for the murder of him. § The maſter of a pawned ſlave is alſo precluded from exacting *Kiſás* for his murder whilſt in the poſſeſſion of his pawnee, without the concurrence and joint application of the latter. ‖

Right of heirs and maſters of ſlaves to remit or compound claim of retaliation.

RETALIATION of death, in caſes of murder, being conſidered the private right of the heirs; or with reſpect to ſlaves, of their maſters; they are at liberty to remit their claim, and forgive the offender; or to compound, with the conſent of the murderer, for a compenſation. ¶ If there be ſeveral heirs, and one of them forgive the offence; or compound with the of-

† Trans. of *Hid.* Vol. IV. p. 287—Alſo the *Moheet* quoted in *F. Á.*

† The *Moheet*, quoted in *F. Á.*

‡ The *Ikhtiyár*, quoted in the *F. Á.* The *Hidáyah* alſo contains a paſſage to the following effect, omitted in the Engliſh Tranſlation, Vol. IV, p. 287. "The *Kázee* is authorized, "like the father, to exact *Kiſás;* as he repreſents the ſovereign in the enforcement of it; "and the ſovereign may exact it for the murder of a perſon leaving no heir."

§ *Moheet*, and *Futáwá* of KÁZEE KHÁN, quoted in *F. Á.* The principle ſtated is alſo recogniſed in the *Hidáyah.* See Trans. Vol. IV, p. 285.

‖ KÁZEE KHÁN, quoted in *F. Á.* and *Hidáyah.* See Trans. Vol. IV, p. 285.

¶ See a full declaration of this right, and the authorities upon which it is founded, (a text of the *Korán*, and ſaying of the prophet), in Trans. of the *Hid.* Vol. IV, p. 299.

fender;

ſender; the other heirs are thereby debarred from enforcing *Kiſás;* but are entitled to their proportions of the fine of blood. If a man murder two perſons, and the heirs of one only forgive him; the heirs of the other are ſtill at liberty to demand retaliation. In like manner when two or more perſons are murdered, the heirs of any of them, who may attend and demand *Kiſás,* are entitled to the enforcement of it, without waiting the attendance of the heirs of all the ſlain; and when the offender has ſuffered retaliation of death for one murder, the heirs of other perſons murdered by him are not entitled to claim payment of the fine of blood from his eſtate.* Nor is ſuch fine payable if the party, liable to *Kiſás* for murder, die before the execution of it.† But if a murderer, ſentenced to ſuffer *Kiſás,* become inſane before he has been delivered over by the *Kázee* to the heir of the ſlain, he is not to be put to death; and his property is anſwerable for the fine of blood.‡ If he become inſane after he has been condemned, and delivered over by the *Kazee* to the heir of the ſlain, the latter is at liberty to put him to death, notwithſtanding his inſanity.§ It is not requiſite that the heir execute the ſentence in this, or any other caſe, with his own hand. But his preſence is required; a ſword, or ſimilar weapon, is the preſcribed inſtrument; and the eſtabliſhed mode of execution is by decapitation.‖

In what caſes inſanity bars the execution of a ſentence for *Kiſás.*

By whom and in what manner a ſentence for *Kiſás* to be executed.

Retaliation for perſonal offen-

RETALIATION for offences againſt the perſon, not affecting

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* SHÂFIJEE differs in opinion from ABOO HUNEEFAH and his diſciples, on this point. See Trans. of *Hid.* Vol. IV, p. 303.

† Trans. of *Hid.* Vol. IV, p. 304.

‡ The *Kholaſah,* and *Tatarkhanee,yah,* quoted in *F. Á.*

§ KAZEE KHÁN, quoted in *F. A.*

‖ *Kifee* and *Mobeet,* quoted in *F. Á.* See alſo Tranſlations of *Hid.* Vol. IV, p. 283, where an oppoſite opinion, by SHÁFIJEE, is ſtated, that on a principle of equality, the murderer ſhould be put to death by the ſame means, as were uſed by him in committing the murder; unleſs the act be ſuch as the law expreſsly prohibits. The general mode of execution now in practice, both for men and women, is hanging; and the bodies of the former are uſually gibbetted near the ſpot where the crime was committed.

life,

life, is reſtricted to wounding and maiming in the following inſtances.

ses, not affecting life, to what caſes reſtricted.

1. For any member of the body ſevered at the joint; as a hand, arm, foot, or leg. Alſo for the fingers, and toes, or part of them, if ſeparated at the joint.

2. For an ear, or part of an ear, cut off.

3. For the noſe, if completely cut away.

4. For the lips; or either of them.

5. For the teeth; or any number of them.

6. For an injury to the eye, deſtroying the ſight, without forcing the eye from the ſocket *

Circumſtances under which it is, or is not, claimable.

A perfect equality, however, being the condition of retaliation for perſonal injuries not occaſioning death; it is not claimable under any circumſtances of inequality; ſuch as one party being a man, the other a woman;† the one being free, the other a ſlave; or both parties being the ſlaves of different perſons, and of different value. Nor is the right hand, or foot, ſubject to amputation for the left; or *vice verſa*; nor a ſound member to be amputated for an unſound one. A difference of religion, however, does not bar the demand of retaliation; as the Moſulman and infidel ſubject are conſidered to be on an equality with reſpect to perſonal protection. Retaliation is not incurred in any caſes of diſmemberment, except at the joint, from the difficulty of maintaining an equality, as well as danger to life, in enforcing it; and for the like reaſon it is not allowed in caſes of fractures, or injury to the bones, excepting the teeth, which may be ex-

* The retaliation in this caſe is to be inflicted by holding a hot iron before the correſponding eye of the offender, till his ſight is extinguiſhed. *Hid.* Trans. Vol. IV. p. 294, and *Káje*, quoted in *F. Á.*

† Shafiite maintains a different opinion upon this point. See Trans. of *Hid.* Vol. IV, p. 295.

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tracted with ſafety. It muſt further be obſerved, as a general principle, that retaliation is not due in any caſe, unleſs the offence be wilful; which is determined by the evidence and circumſtances, without regard to the inſtrument; as required in the ſtated diſtinction between murder and manſlaughter.*

Urſh, or fine of blood payable in caſes ſhort of life, which do not incur retaliation.

OFFENCES againſt the perſon, which do not incur retaliation, ſubject the offender, if the act be wilful, or his *Âakilah*, if the act be involuntary and the eſtabliſhed fine amount to five hundred *dirms*, to the payment of *Urſh*, or the fine of blood in caſes ſhort of life. The rate of this fine is ſpecifically fixed in ſome caſes; particularly for diſmemberments, and for wounds in the head and face, termed *Shujjah*; and for any material injury to the perſon, or deſtruction of faculty, it is equal to the *diyut* for homicide. In other caſes, and eſpecially where the injury is partial, or indeterminate, the compenſation is left to be ſettled by an equitable adjuſtment (*Hukoomut ŏol ûdl*) which, according to *Tuhávee*, is to be made by ſuppoſing the wounded perſon a ſlave, and aſcertaining his difference of value, with or without the wound he has received. If ſuch difference be equal to a twentieth of the full value, before the wound was inflicted, a twentieth of the entire fine of blood is to be adjudged; if a tenth, or any other proportion, the fine to be regulated accordingly.†—Both *Kiſas* and *Urſh*, for perſonal injuries not affecting life, are however open to compoſition between the parties; and the injured perſon is at liberty to remit the penalty, on the ſame principles of private right and ſatisfaction, which have been ſtated with reſpect to the proviſions for homicide.

Both *Kiſas* and *Urſh* open to remiſſion, or compoſition, as in caſes of homicide.

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‡ *Hid.* Chapter entitled "*Kiſás* in caſes ſhort of life." And Chapter of the ſame deſignation, in *F. Á.* containing quotations from the *Futáwá* of KÁZEE KHAN; the *Káfee*, *Mubeet*, *Zukheerah*, *Khuzánut ŏl Mŏfti,een*, *Jouhuriah ŏŏ Nýyuiah*, and other authorities.

† *Hidayah.* Section reſpecting fines for offences not affecting life—and correſponding ſection in the *F. Á.*

THE

Second general head of the criminal law, *Hudd*, or *Hoodood*.
Its general principles; and how diſtinguiſhed from *Kiſas* and *Tâzeer*.

THE ſecond general head of the Mohummudan criminal law, denominated *Hudd*, or *Hŏodood*, is ſtated, in the *Hidáyah*, to compriſe the ſpecific penalties fixed with reference to the right of GOD, or in other words, to public juſtice. It is therefore diſtinguiſhed from *Kiſás*, which is conſidered the right of man, or private; as well as from *Tâzeer*, which is indefinite, and left to the diſcretion of the magiſtrate.* The deſign of *Hudd* is to deter offenders from the perpetration of criminal acts, injurious to the community of GOD's creatures. This being a public right, the *Imám*, or his deputy, is excluſively authorized to enforce it. The claim and proſecution of the party injured are not indiſpenſably requiſite; and he cannot remit, or compound, the preſcribed penalty, as in caſes of *Kiſas*. But the execution of *Hudd* is prevented by any doubt, or legal defect; and the *Imám* is directed to adminiſter the law with lenity; preferring a diſpenſation with the legal penalties to the rigid exaction of them, in all caſes that may admit of it.†

Zinâ, or whoredom.
Its legal definition; and in what caſes liable to *Hudd*.

OF the five deſcriptions of crimes beforementioned as provided for under the general head of *Hudd*, the firſt is *Zinâ*, or whoredom; which is defined in the *Hidáyah* to be "an unlawful conjunction of the ſexes;" or with reſpect to the man, is more particularly deſcribed as "the carnal conjunction of a man with a woman who is not his property, either by right of marriage, or bondage; and reſpecting his property in whom there may be no doubt or preſumption" (*Shŏobhah*).‡ The ſame definition, in ſubſtance, is quoted in the *F. Âalumgeeree* from the *Niháyah*. In the *Káfee*, as alſo cited in the *F. Áalumgeeree*, *Shŏobhah* is ſtated to be "that which appears to be juſt and right but in truth is not;" and with reſpect to the ſubject

Nature of *Shoobbah*, which bars a ſentence of *Hudd*.

* *Hid.* Introduction to book of *Hŏodood*.

† *Buhr-i-rayik*, *Mubeet* of SURUKHSEE, *Aſhbáh ó Nuzáyir*, and *Tubeen*, quoted in the *F. Á.*

‡ See Trans. of *Hid.* Vol. II, p. 19.

in queſtion, is ſpecified to be of three kinds. 1. *Shŏobhah-i Iſhtibáh* or miſconception of the act as legal, when it is in fact illegal. It is requiſite therefore that ſuch miſapprehenſion ſhould influence the perſon by whom the act is committed; and muſt be pleaded by him to bar a judgment of *Hudd*. 2. *Shŏobhah-i-Hŏokmee*, or conſequential to the actual exiſtence of ſome ground of legality, to the practical operation of which there is an impediment. The doubt in this caſe therefore is independent of the belief of the party; and prevents the infliction of *Hudd*, whether he ſuppoſe the act legal, or otherwiſe; inſomuch that the parentage in this caſe may be eſtabliſhed; though it cannot be in the firſt deſcription of illegal connection. 3. *Shŏobhah-i-ûkd*, or a preſumption from marriage; which, according to ABOO HUNEEFAH, is ſufficient to exempt the parties from the puniſhment of *Hudd*, whether they know the marriage to be illegal, or not. But his diſciples maintain that if the parties marry, with full knowledge of the illegality of the contract, no doubt ſubſiſts to preclude the ſentence of the law. A ſimilar explanation of *Shŏobhah* is given in the *Hidáyah*, with a ſpecification of the following inſtances of the firſt and ſecond kinds; viz: of the former, if the woman be the ſlave of the man's father, mother, or wife; his wife repudiated by three divorces, or completely divorced for a compenſation, during her *Îddut*, or period of probation; his *Om-i wulud*, or ſlave who has borne a child to her maſter, in her *Îddut*, after emancipation; his fellow ſlave, belonging to the ſame maſter; or a ſlave delivered in pledge, or borrowed, with reſpect to the pawnee, or borrower. Of the latter kind, if the woman be the ſlave of the man's ſon or grandſon; his wife repudiated by an indirect, implied, divorce only; his late ſlave, ſold to another, but not yet delivered; a ſlave ſtipulated to be given in dower to his wife, but not yet received by her; and a ſlave held in partnerſhip, with reſpect to any of the partners*

* See Trans. of *Hid.* Vol. II, p. 20. Many other inſtances are given in the *F. Á.* But a detail of them would occupy too much room in this ſummary; and does not appear requiſite.

THE

Punishment of the crime of *Zina* when established.

THE ſtated puniſhment for the offence of *Zirá*, or whoredom, when legally eſtabliſhed, againſt a man of ſound underſtanding and mature age, being a Moſulman, and free, who has conſummated a lawful marriage with a woman of the ſame deſcription (all of which requiſites are implied in the terms *Mohſun*, and *Ihſán*,) is lapidation, or ſtoning to death. If the convicted perſon be free, ſane, and adult; but without the other conditions of *Ihſán*, viz. either not a Moſulman, or unmarried, he is liable to a ſentence of one hundred ſtripes. If he be a ſlave, the puniſhment is reduced to fifty ſtripes, on the authority of a paſſage in the *Korán;* which declares that ſlaves ſhall be ſubject to half the puniſhment only of free married perſons. The penalties for a man and woman, in like circumſtances, are the ſame; but the latter is not to be ſtripped, except of her outward garment, to receive the ſtripes inflicted upon her; and with a further regard to decency ſhe is to receive them in a ſitting poſture; whereas a man is to be puniſhed ſtanding, and naked, except his girdle. It is alſo recommended, by the example of the Prophet and ÂLEE, though not poſitively enjoined, that in ſtoning a woman, a hole in the ground be dug to conceal her body, as high as the breaſt. In the execution of lapidation, if the charge have been eſtabliſhed by witneſſes, they are required to commence the ſtoning; which is to be continued by the *Imám*, or *Kazee;* and concluded by the by-ſtanders. If the conviction be founded upon the confeſſion of the party, the *Imám* or *Kázee*, is to begin the ſtoning, and the people preſent to finiſh it. The body is afterwards to receive the uſual ablutions, and interment. In ſcourging for whoredom, it is directed that the ſtripes be inflicted with a whip *(tázeeánah)* which has no knots in it; that it be applied with moderation; viz. neither with ſeverity, ſuch as might tend to deſtruction; nor with a degree of lenity inadequate to the deſign of correction: and that the hundred ſtripes be given on different parts of the body, ſo as not to be attended with danger to life. It is further provided that the puniſhment of ſcourging, and ſtoning, ſhall

not

not be united; the object of the former, which is the correction of the party, being incompatible with the latter; which is intended to be an example and warning to others. The addition of baniſhment, or impriſonment, for a limited period, to ſtripes, is left to the diſcretion of the *Imám* or *Kázee*. The execution of a ſentence for ſcourging, but not for lapidation, is ordered to be ſuſpended in caſes of illneſs; and both are to be poſtponed, in the caſe of a pregnant woman, until ſhe be recovered from her labour. *

Evidence required to eſtabliſh a charge of whoredom.

THE ſeverity of the puniſhment which the Moſulman Law giver preſcribed for whoredom, by a married man, poſſeſſing the requiſites of *Ihſán*, when eſtabliſhed upon full legal evidence, appears to have influenced him in requiring ſuch proof of the offence as can ſeldom be obtained; and in allowing the puniſhment to be avoided by means which muſt, almoſt always, be expected to prevent the execution of a ſentence of lapidation. The evidence of women is not admitted to prove the commiſſion of any offence incurring *Hudd*, or ſpecific puniſhment; and the poſitive teſtimony of four men, of aſcertained credit, is requiſite to prove a charge of whoredom, if denied by the accuſed. What has been already ſtated concerning the qualification of witneſſes admiſſible in caſes of murder, is equally applicable to the admiſſibility of witneſſes on a charge incurring *Hudd*; except that, as the proſecution for *Hudd* is of a public nature, the party injured, and his connections, are admitted to be competent witneſſes. It is further declared in the *Hidayah*, † that "in caſes inducing ſpecific puniſh-
"ment, witneſſes are at liberty either to give or withhold their
"teſtimony; becauſe they are diſtracted between two laudable
"actions; namely, the eſtabliſhment of the penal act, and

* See the whole of what has been ſtated on the puniſhment of whoredom in Trans. of *Hid.* Vol. II, p. 8 to 18. The ſame proviſions, and others of leſs conſequence, are quoted in the *F. Á.* from the *Káfee*; the *Mubſoot* of SURUKHSEE; the *Buhr-i ráyik*; *Khuzánut ool Mooftieen*; *Eenáh*; *Mohèet*; and other authorities.

† See Trans. of *Hid.* V. II, p. 666.

"the

" the preſervation of character. The concealment of vice " is moreover preferable; becauſe the prophet ſaid to a per- " ſon who had borne teſtimony, *verily it would have been better* " *for you if you had concealed it.* And alſo becauſe he elſe- " where ſaid—*Whoever conceals the vices of his brother Moſulman,* " *ſhall have a veil drawn over his own crimes in the two worlds* " *by* GOD. Beſides, the inſtruction given by the prophet, and " his companions, for the prevention of puniſhment, is a " proof that the concealment of ſuch evidence as tends to " eſtabliſh it is commendable." If leſs than four competent witneſſes bear evidence to whoredom, they are liable to the puniſhment of ſlander; unleſs the accuſed ſubſequently confeſs. If four witneſſes have given evidence, and one or more of them be ſubſequently found incompetent, as being a ſlave, or previouſly convicted of ſlander, the whole of the witneſſes are alſo liable to the penalty for that offence. If any witneſs retract his teſtimony, it is no longer valid. And if one of four witneſſes retract after the execution of a ſentence of lapidation, he is reſponſible for a fourth of the fine of blood, beſides being puniſhable for ſlander. But if five witneſſes have given evidence, the teſtimony of one being retracted incurs no penalty, and does not affect the ſentence; as it is ſtill maintained by the requiſite legal proof. It is further ſtated in the *Hidáyah* that " the apparent probity of the witneſſes does not ſuffice in " a charge of whoredom It is neceſſary that the magiſtrate " aſcertain their probity, both by an open and ſecret purgation; " in ſuch a manner that poſſibly ſome circumſtance may ap- " pear to prevent the puniſhment; becauſe the prophet has " ſaid—*ſeek a pretext to prevent puniſhment according to your abi-* " *lity*; contrary to all other caſes, in which the apparent in- " tegrity of the witneſſes is, according to ABOO HUNEEFAH, to " be held ſufficient.*

* Trans of *Hid.* Vol II, p 4. The evidence required to eſtabliſh a charge of *Zinà* is alſo mentioned in the *Tubeen, Mubeet, Mubſoot, Ităheyah,* and other works quoted in the *F. A.*

Confeſſion of parties, under what reſtrictions, ſufficient to eſtabliſh a charge of whoredom.

THE confeſſion required to eſtabliſh a charge of whoredom, in defect of teſtimony, muſt be made by a perſon of ſound mind and mature age, four times, at four different ſittings of the *Kázee;* who is directed to turn the party away, without receiving his (or her) confeſſion, the firſt, ſecond, and third time; and is authorized to ſuggeſt a denial, or the mention of circumſtances which may exculpate, or abſolve from the legal penalty. A perſon confeſſing whoredom may alſo, at any time, retract his confeſſion, even during the infliction of the puniſhment; and if his ſentence be founded upon it, he muſt be diſcharged.* A confeſſion, though repeated four times, before any other perſon than the *Kázee,* is inſufficient for conviction.† The terms of a confeſſion, as well as of teſtimony taken before the *Kázee,* muſt be clear and poſitive; and muſt expreſsly ſpecify the crime of *Zináً.*‡ A confeſſion made in a ſtate of intoxication is invalid.§ As it alſo is if any compulſion be uſed to obtain it.‖ Conviction of *Zináً* cannot be founded, partly on confeſſion, partly on evidence. And according to ſome authorities, the teſtimony of four witneſſes is not ſufficient to convict, with a ſingle confeſſion ¶ If a man confeſs whoredom, and afterwards plead that he is not *Mohſun,* his plea is to be admitted, and he is to be ſcourged, inſtead of ſuffering lapidation.** There is no difference between *Zimmees,* ſlaves, and free *Mŏŏſlims,* with reſpect to confeſſions.†† A

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* Trans of *Hid.* Vol. II, p. 5 to 8. Alſo *Tuhávee, Shumunee, Jouhurah-i nſ yurah, Buhr-i-ráyik,* and *Moheet,* quoted in *F. Á.*

† *Tubeen,* quoted in *F. Á.*

‡ *Fut'hŭl Kudeer,* quoted in *F. Á.*

§ *Buhr-i ráyik,* quoted in *F. Á.*

‖ *Khuzánut ŭl Mŏnſtiēen,* quoted in *F. Á*

¶ *Kaſee, Fut'h ŏŏl kudeer,* and *Kazee Khán,* quoted in *F. Á.* A difference of opinion is ſtated, between IMÁM MOHUMMUD and ABOO YOOSUF, if the ſingle confeſſion be after judgment; the former maintaining that *Hudd* ſhould be enforced, the latter that it ſhould not. But (ſtrange as it appears that one corroborative confeſſion ſhould diminiſh, inſtead of ſtrengthening, the teſtimony of the four witneſſes) it is ſaid that both agree, a ſentence of *Hudd* cannot be paſſed after a ſingle confeſſion.

** *Eezáh,* quoted in *F. Á.*

†† *Mubſoot,* quoted in *F. Á.*

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man's confeſſion of whoredom with a lunatic woman, or a girl, ſubjects him to *Hudd*. But a woman's confeſſion of *Zinā* with a madman, or with a boy, does not ſubject her to the ſtated puniſhment.* If one party confeſs whoredom, and the other allege marriage, *Hudd* is ſtayed, and the man is anſwerable for the woman's dower only.†

Circumſtances which prevent execution of a ſentence of lapidation.

In a caſe of conviction upon evidence, if the witneſſes or any one of them, decline to ſtone firſt, the ſentence of lapidation cannot be put in execution.‡ If a convict fly after receiving part of his puniſhment, and be immediately re-apprehended, he is to ſuffer the remainder of his ſentence.§ But if he be ſeized after an interval of ſome days, the further puniſhment is not to be enforced.‖ Laſtly, if a man have been guilty of whoredom in ſeveral inſtances; and be puniſhed for one, he is not liable to additional puniſhment for the remainder. This is declared in the *Hidāyah*, with a reaſon, in explanation, that the deſign of the puniſhment in this caſe being to deter from the commiſſion of the ſame offence; and it being probable, or at leaſt poſſible, that this end may be attained by the infliction of it in one inſtance; it is not lawful to repeat the puniſhment for any other paſt offence.¶

One puniſhment ſuffices for all paſt inſtances.

Second ſpecies of *Hudd*, or *Shoorb*. Definition; and to what liquors it is applicable.

The ſecond ſpecies of *Hudd*, according to the uſual arrangement in books of Mohummudan law, is for *Shŏŏrb*, literally drinking, or liquor; but here implying the drinking of wine (*Khumr*) in any degree; and of other prohibited liquors, ſo as to be intoxicated by them. *Khumr*, of which the uſe is abſolutely forbidden in the *Korán*, and to declare the legality of which in-

* *Eezáh*, quoted in *F. Á.* See the caſe more fully ſtated, with the grounds of diſtinction, in Trans. of *Hid* Vol. II, p. 30, 31.

† *Moheet*, quoted in *F. Á.* See alſo Trans. of *Hid.* Vol. II, p. 35.

‡ *Fut,h ŏŏl kudeer* and *Tubi,een*, quoted in *F. Á.*

§ *Mubſoot*, quoted in *F. Á.*

‖ *Ĭtábeeyah*, quoted in *F. Á.*

¶ See Trans. of *Hid.* Vol. II, p. 73.

curs

thus the penalties of apoſtacy, is defined by ABOO HUNEEFAH to be the crude fermented juice of the grape, which after gathering foam and ſettling, poſſeſſes an inebriating quality. ABOO YOOSUF and IMÁM MOHUMMUD conſider the term applicable to the fermented juice, in a ſpirituous ſtate; whether it have gathered foam or not. There are three other deſcriptions of prohibited liquor; denominated *Bázik*, *Sukur* and *Nukee,â i Zubeeb*. The firſt is the juice of grapes boiled, until any quantity leſs than two thirds evaporate. It is alſo called *Monuſſuf* when half is evaporated. The ſecond is made by ſteeping freſh dates in water till they ſweeten it. The third is produced by ſteeping raiſins in water, till it becomes fermented and ſpirituous. The illegality of theſe liquors being matter of opinion, the drinking them is not puniſhable, unleſs it be in a degree to occaſion intoxication. If the juice of grapes be boiled, until two thirds evaporate, in which ſtate it is called *Moſullus*, and if drank, not with a view of pleaſure, but to invigorate the conſtitution; it is held lawful by ABOO HUNEEFAH, and ABOO YOOSUF: though not by IMÁM MOHUMMUD, SHAFI,ÎLE and MÁLIK. Liquor produced from honey, wheat, barley, or millet, and not drank to exceſs, is alſo eſteemed lawful by the two former; and ABOO HUNEEFAH is ſaid to have been of opinion that even intoxication, proceeding from ſuch liquor, is not ſubject to the penalty of *Hudd*. But, on the authority of *Imám* MOHUMMUD, it has been ruled that intoxication, from any of the liquors ſpecified, as well as from *Nubeez* (a fermented liquor made by ſteeping dates, raiſins, &c. in hot-water) does not incur the ſtated puniſhment. A difference of opinion exiſts between ABOO HUNEEFAH, and his two diſciples, as to the degree of intoxication which is puniſhable. The former maintains that the party muſt be ſo inebriated, as not to underſtand what is ſaid to him; or to diſtinguiſh a man from a woman. The latter conſider penal drunkenneſs to be ſufficiently eſtabliſhed by confuſed and incoherent ſpeaking,

What degree of intoxication is puniſhable.

the

the uſual ſign of inebriety, and this opinion is moſt generally received*.

Penalty for drinking wine, or intoxication with other liquors.

THE legal penalty for drinking wine, or being intoxicated with the other prohibited liquors ſpecified, is, if the offender be a free man or woman, eighty ſtripes with a *Tázeeánah*, to be inflicted in the ſame manner as provided in the caſe of whoredom; or forty ſtripes if the drinker be a ſlave, whether male, or female.† None but perſons of the Moſulman faith however, and among thoſe ſuch only as are adult, ſane, and capable of ſpeech, are liable to the ſtated penalty.‡

By what evidence the offence is eſtabliſhed.

THE crime is eſtabliſhed by the voluntary confeſſion of the party; or by the teſtimony of two witneſſes. But it is neceſſary that the offender be ſeized whilſt in a ſtate of intoxication, or whilſt his breath yet ſmells with liquor; and that he be immediately brought before the *Kázee:* neither his confeſſion, or the evidence againſt him, being ſufficient for his conviction, according to the doctrine of ABOO HUNEEFAH and ABOO YOOSUF, (though it is, in the opinion of IMÁM MOHUMMUD, as in caſes of whoredom, at any time not exceeding one month) after the ſmell of the liquor has ceaſed; unleſs he were ſeized at a diſtant place, when intoxicated, or when ſtill retaining the ſmell of the liquor, and the delay in bringing him before the *Kázee* has proceeded from the remote ſituation of the place of ſeizure. The ſmell of the wine however, or even the vomiting it, without the teſtimony of witneſſes, or the drinker's confeſſion, is not enough for conviction; becauſe, as ſtated in the *Hidáyah.* "The ſmell alone "leads to but a very uncertain concluſion; as this may.

* See Trans. of *Hid.* Vol. II. p. 53. Chap. on puniſhment for drinking; and Vol. IV. p. 154. Book on prohibited liquors. The *Futáwá* of KÁZEE KHAN, and *Sirájeeyah*, are quoted in the *F. Á.* to the ſame effect.

† Trans. of *Hid.* Vol. II. p. 56. Alſo the *Kunz* and *Siráj-i-wuhhájy*, quoted in *F. Á.*

‡ *Kuhi-i ráyih* quoted in *F. Á.*

" proceed either from the perſon having drank wine; or from " his having ſat among wine drinkers, from whom he may " have contracted the ſmell; and it is alſo poſſible that wine " may have been adminiſtered to him by force, or menaces, " in which caſe no puniſhment is incurred" A confeſſion made during a fit of intoxication is invalid. And if a perſon confeſſing the drinking of wine, or other prohibited liquor, afterwards retract his acknowledgement, it is not admiſſible to convict him for puniſhment; which, with reſpect to wine-drinking, is declared to be purely a divine, or in other words, a public right.* It is further provided, that the ſtated puniſhment is not to be inflicted whilſt the offender is in a ſtate of intoxication, that determent, the end propoſed, may be duly obtained.

Puniſhment not to be inflicted during intoxication.

Third head of *Hudd*, or *Kuzuf*. Definition of the offence.

THE third ſubordinate head of *Hudd* is for *Kuzuf*, or ſlander of whoredom; which, according to the legal definition of the term, is committed by a falſe imputation of whoredom, againſt a man or woman, who poſſeſſes the qualifications of *Ihſán;* viz. is free, ſane, adult, of the faith of *Iſlám*, and of chaſte reputation †. Equivocal expreſſions are conſtrued according to the apparent intention of the ſpeaker; and if they clearly indicate a charge of whoredom, incur the puniſhment of ſlander, unleſs the truth of the charge be admitted or proved ‡. No penalty however is due for imputing

* Trans. of *Hid.* Vol. II. p. 55, 56, alſo the *Siráj-i Wahháj*, and *Zúbeereeyah*, quoted in the *F. Á.*

† Trans. of *Hid.* Vol. II. p. 60, and commentary of TUHÁVEE quoted in *F. Á.* This definition of *Ihsán*, with reference to ſlander, differs from that before ſtated reſpecting whoredom, in the ſubſtitution of *chaſtity* (which, according to TUHÁVEE, conſiſts in freedom from any adulterous, dubious,, or illegal connection) for the *conſummation of a lawful marriage.* The reaſon given in the *Hidáyah* for requiring chaſtity in the accuſed, to maintain a charge of ſlander, is—" becauſe no ſcandal attaches to any other perſons than thoſe who are of chaſte " repute; and the accuſer of an unchaſte perſon moreover ſpeaks truly."

‡ Several examples of words conſtituting, and not conſtituting, a penal imputation of whoredom, are given in the *Hidáyah;* and many more in the *Zuheereeyah, Futhóo' Kudeer, Moheet, Mubſoot, Jauhurah-i-Núyurah*, and other authorities quoted in the *F. Á.* But it does not appear neceſſary to ſpecify them.

whoredom

whoredom to a perſon who has actually committed that offence, whether in the particular inſtance ſtated, or in any other *; provided the fact be eſtabliſhed, either by the poſitive teſtimony of four competent witneſſes; or by the voluntary acknowlegement of the party accuſed; or by the evidence of two men, or one man and two women, in proof of a confeſſion of the fact.†

Penalty for ſlander, when eſtabliſhed.

THE penalty for ſlander, when legally eſtabliſhed, is declared in the *Korán* to be eighty ſtripes (which are to be inflicted in the manner already deſcribed under the puniſhment of whoredom) if the offender be free; or forty ſtripes if he (or ſhe) be a ſlave ‡. But as the *huk ŏŏlûbd* (right of the individual) is blended with the *Huk ŏŏlluh* (right of GOD, or public right) in a caſe of ſlander;‖ it is requiſite that the ſlandered perſon if living, or if dead, that the perſon whoſe lineage is affected by the imputation, proſecute the charge and demand the ſtated puniſhment. The free confeſſion of the accuſed, or the evidence of two credible male witneſſes, is required to prove the accuſation. But, in conſideration of the private right included in the proſecution, the retractation of a confeſſion, once made, is not permitted.§ An infidel ſlandering a Moſulman, who poſſeſſes the requiſite of *Ihſán*, is liable to the ſtated penalty. And it is declared in the *Hidáyah*, that "if an infidel reſiding under pro-

Evidence required to prove accuſation of ſlander.

Infidel ſubjects, and reſidents under protection, liable to ſame penalty, as Moſulmans.

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* *Mubſoot* of SURUK,HSEE and *Zuheereeyah*, quoted in *F. Á.* It is added from the *Eezáh*, that the witneſſes of the accuſed, to prove the truth of his allegation, are to be heard, if they attend after his conviction, or even after the execution of a ſentence againſt him has commenced; and that, on their eſtabliſhing the charge, no further puniſhment for ſlander is to be inflicted.

† *Mubſoot*, quoted in *F. Á*

‡ Trans. *Hid.* Vol. II p. 59, and *Fut,hŏŏl Kudeer* quoted in F. Á.

‖ Trans. of *Hid.* Vol. II, p. 64. SHAFI,EE contends that the right of the individual is ſuperior to the right of GOD, the former being neceſſitous, while the latter is not. ABOO HUNEEFAH and his two diſciples hold the right of the creator to prevail in preference to that of his creatures.

§ Trans. of *Hid.* Vol. II, p. 64. And the *Ikhtiyár*, and *Káfee*, quoted in *F. Á.*

"tection

" tection in a MOHUMMUDAN ſtate, ſlander a Moſulman, pu-
" niſhment for *Kuzuf* is incurred by him; becauſe, in pu-
" niſhment for ſlander, individual rights are concerned; and
" the protected infidel has undertaken to pay due obſer-
" vance to the rights of individuals. As he himſelf deſires
" to be protected from injury; it follows that he undertakes
" not to offer injury to others; and alſo that he ſubjects
" himſelf to the legal conſequences, if he ſhould." If a Mo-
ſulman, or infidel, ſuffer the preſcribed puniſhment for ſlan-
der, his teſtimony is for ever afterwards inadmiſſible; unleſs
with reſpect to the infidel, he ſubſequently embrace the
MOHUMMUDAN faith; in which caſe, the competency of his
evidence is reſtored, with the addition of being valid againſt
Moſulmans which it was not during his infidelity*.

Effect of puniſhment for ſlander upon future teſtimony of the party.

A SON is not entitled to demand puniſhment for ſlander
againſt his father, or mother; or his paternal or maternal
anceſtors; nor a ſlave againſt his maſter; on the principles
before ſtated under the head of *Kiſās* † The execution of a
ſentence of *Hudd* for ſlander is alſo ſtayed by the death of
the ſlandered perſon; or, if he die, without having proſecuted
for it, no one can claim it, on his account, after his demiſe.‡
If the party ſlandered be defunct at the time, his or her
father, mother, children, or any paternal anceſtor or lineal
deſcendant, may proſecute, provided that injury be ſhewn
to ariſe to the lineage of the proſecutor from the ſlander com-
plained of. The ſon's ſon, and the daughter's ſon, have the
ſame right of proſecution; but neither can proſecute for ſlan-
der upon his maternal anceſtors. Nor can brothers, or ſiſters,
uncles, or aunts, claim the infliction of *Hudd* for ſlander on
each other reſpectively. ‖ In this, as in other caſes of

What perſons entitled, or not, to proſecute a charge of ſlander.

* Trans. of *Hid.* Vol. II, p. 72. And *Tuhâvee*, quoted in *F. Á.*
† Trans. of *Hid.* Vol. II. p. 63. and *Eezah*, quoted in *F. Á.*
‡ Trans. of *Hid.* Vol. II. p. 63. and *Fut. Kurkhee* quoted in *F. Á.*
‖ *Tumurtaſhee*, KAZEE KHÁN, *Muheet*, and *Tuhâvee*, quoted in *F. Á.*

Hudd,

Hudd, the charge may be profecuted through a *Vakeel*, or conſtituted agent, according to the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD. But it is generally agreed, that the claimant muſt attend in perſon for the execution of the ſentence. * The following differences between the rules of *Hudd* for *Zinâ* and *Kuzuf* are ſtated by KÁZEE KHÁN. 1. *Hudd* for ſlander is not prevented by a lapſe of time, as it is for whoredom and drunkenneſs. 2. *Hudd* for ſlander is not inflicted without the claim of the ſlandered perſon; but for whoredom it is. 3. It is ſtated, as a further difference, in the *Futh ool Kudeer*, that the *Kázee* may found a conviction of ſlander upon his own knowledge, obtained during his office; though not upon his previous knowledge, without additional evidence. In the *Eezâh* it is declared commendable to relinquiſh the proſecution of a charge for ſlander, and the *Kázee* is authorized to adviſe the complainant to renounce his claim, at any time before the charge is eſtabliſhed. It is further ſtated in the *Hidáyah*, that a ſingle puniſhment for ſlander, as for whoredom and wine-drinking, includes all paſt offences; the deſign not being private ſatisfaction (as maintained by SHÁFIÎEE, on the doctrine that the right of the individual predominates in caſes of ſlander;) but, on a principle of public juſtice, to deter, by an example, from a repetition of the offence in future. †

Differences between rules of *Hudd*, for *Zinâ*, and *Kuzuf*.

Relinquiſhment of charges for ſlander declared commendable.

A ſingle puniſhment includes all paſt offences.

Surikah or larceny, the laſt offence ſpecifically provided for under the general head of *Hudd*, is diſtinguiſhed as *Surikah-i-Soghrá*, and *Surikah-i-Kobrá*, or literally, *Petit* and *Grand Larceny*; but not in the ſenſe for which theſe terms are uſed under the Engliſh law, to denote the ſtealing of goods not exceeding, or exceeding, the value of twelve pence. As applied by the Mohummudan law, they correſpond more nearly, though not exactly, with the diſtinction of *theft* and *rob-*

Surikah, or larceny, diſtinguiſhed as *Soghrá* and *Kobrá*.

* *Futh ool Kudeer*, quoted in *F. A.*

† See Trans. of *Hid.* Vol. II, p. 73, 74.

bery; the former deſignation implying ſecret larceny, by ſtealth; the latter, open larceny, by force and violence.

Legal definition of *Surikah*; and application of it to charges of theft, and robbery.

THE legal meaning of *Surikah* is defined, in the *Hidáyah*, to be "a reſponſible (viz. a ſane and adult) perſon's wrongfully "and ſurtively taking the undoubted property of another, "when ſuch property is in due cuſtody; and the value of it "not leſs than ten *dirms*." * The furtive or clandeſtine taking, in caſes of highway robbery, is explained to reſpect the *Imám*, or chief magiſtrate, whoſe province it is to guard the highways by means of his aſſiſtants; and, in caſes of private larceny, is ſtated to reſpect the individual proprietor, or his repreſentative. The ſecrecy, or ſtealth, included in the primitive ſenſe of the word *Surikah*, is further explained as applicable to the beginning only of the act, when a theft is committed during the night; it being uſual for a thief to enter or break into a houſe ſecretly, at night, and then to take away the property by violence, as the owner cannot obtain ready aſſiſtance. But in the day time, when aid can be eaſily procured, and when therefore the forcible ſeizure of property is ſeldom attempted, the condition of furtively taking away includes both the beginning and end of the tranſaction, to eſtabliſh a charge of theft. † The cuſtody requiſite for maintaining ſuch charge, or an accuſation of robbery, is of two kinds. 1. *Hirz ba Mukán*, or cuſtody of place, being ſuch place as is generally uſed for preſerving the property contained in it; whether a houſe, ſhop, tent, or other receptacle: to conſtitute theft from which it is not material that the door be ſhut; but it is eſſential, to complete the crime, that the property be taken out of the place of cuſtody. 2. *Hirz ba Háfiz*,

* See Trans. of *Hid.* Vol. II, p. 22, where the definition is given ſome what more at length. It is alſo quoted in the *F. Á.* from the *Ikhtiyár* in nearly the ſame terms.

† *Hid.* Trans. Vol. II, p. 83. and *Nuhr-i-Fáyik* quoted in *F. Á.* The caſe of ſecretly breaking into a houſe at night, and forcibly bringing out property under reſiſtance from the owner, is expreſsly ſtated in the *Mohees* of SURUKHSEE, as ſubject to the preſcribed penalty of amputation; but that puniſhment is declared not to be incurred, if the ſame offence were committed by day.

or

or perſonal guard; from the watch of a perſon over the property, which, if near to him and within his ſight, is conſidered to be under his cuſtody, though on a road or plain; and whether the keeper be aſleep or awake. The actual ſeizure of it, when ſo watched, is further deemed ſufficient to eſtabliſh the crime of theft, whether the property be taken away, or not. * The ſtandard of value for inflicting the puniſhment of theft is ſtated in the *Hidayah* to be fixed at ten *dirms*, (or from two to three rupees according to different calculations) on the authority of a tradition from the prophet importing that "there is no amputation for leſs than a *deenár* or ten *dirms*."† The *dirm* of the higheſt current value is to be uſed in the computation; and in caſes of doubt, the property is to be appraiſed by two perſons duly qualified for the purpoſe.‡

Evidence required to eſtabliſh a charge of theft. And inſtruction to the *Kázee* in trying ſuch charge.

A CHARGE of theft is eſtabliſhed by the voluntary confeſſion of the party accuſed; or by the teſtimony of two credible male witneſſes. A ſingle confeſſion is ſufficient, according to the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD; though ABOO YOOSUF requires a repetition of it.§ But the *Kázee*, with a view to prevent the infliction of the preſcribed puniſhment, is authorized to adviſe the thief not to confeſs ‖. A retractation of confeſſion is alſo admiſſible (if there be no other proof) to ſtay a ſentence of *Hudd*, though not to ſave from a reſtitution of ſtolen property.¶ A confeſſion of theft committed on a perſon or perſons unknown is inſufficient for conviction.** If two or four perſons confeſs a joint theft, and half the number retract, the remainder can-

* *Hid.* and *Siráj i wuhháj* quoted in the *F. Á.*

† SHAFIJEE contends that the ſtandard is the fourth of a *deenár*; and MÁLIK ſuppoſes it to be three *dirms*; as the loweſt value of a ſhield; for which amputation was inflicted in the time of the Prophet. See their argument, and that of ABOO HUNEEFAH and his followers. Trans. of *Hid.* Vol. II, p. 84.

‡ *Moheet* and *Tuheen* quoted in *F. Á.*

§ See their different opinions in Trans. of *Hid.* Vol. II, p. 86.

‖ *Zubeereeyah*, quoted in *F. Á.*

¶ *Hid.* Vol. II, of Trans. p. 86, and *Ikhtiyár* quoted in *F. Á.*

** *Zukheerah*, quoted in *F. Á.*

not

not be convicted for punishment on their confession only*. Nor can a conviction be founded upon a confession of stealing property, of which part is declared by the person robbed to belong to the thief.† But a confession of having committed a theft, with another person not apprehended, is conclusive for the conviction of the party confessing, without the attendance of the other, provided he acknowledge the taking ten *dirms* or more‡. The confessions of infants, before they have shewn signs of maturity, are invalid;§ as are likewise all confessions extorted by compulsion.‖ If the person accused of theft deny the charge, it is incumbent upon the accuser to prove it; or, in defect of proof, the accused may be put upon his oath, to exculpate himself; if he decline which, he may be made answerable for the property stolen; but is not liable to punishment; nor, according to the *Futáwá-i Kóobrá* is it legal, in any case, to beat him, without conviction; though the jurist ABOO BUKR AÂMUSH is cited, as declaring it to be at the discretion of the IMÁM, when he may suspect the accused of being the thief, and of having the stolen property in his possession, to chastise him, for the purpose of making him confess and deliver up the property.¶ The evidence of women is not admissible, in any case, to ground a sentence of *Hudd*. But the testimony of one man, and two women, may be admitted to establish a right to stolen property, as in other cases of private right. The *Kázee* is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be not produced in court. He is also enjoined to ascertain their credit, if it appear doubt-

* *Itabeeyah*, quoted in *F. Á.*

† *Moheet*, quoted in *F Á.*

‡ *Moheet*, quoted in *F. Á.*

§ *Moheet*, quoted in *F. Á.*

‖ *Zuheereeyah* quoted in *F. Á.* A modern opinion, in favor of the validity of a forced acknowledgement is also noticed; but it is not deemed authoritative.

¶ *Zukheerah*, and *Fut. Kóobrá*, quoted in *F. Á.*

ful.

ful. If the accuſed be a *Moſulman*, the witneſſes to prove the charge againſt him muſt be of the ſame perſuaſion; and if two infidels depoſe to a theft jointly committed by a Moſulman and an infidel, their evidence is declared inſufficient to convict either. It is further declared that if two witneſſes depoſe to the commiſſion of a theft by one perſon, and two to it's having been committed by another perſon, neither can be convicted on their evidence, though the party robbed ſhould charge one of them.* If two witneſſes depoſe to a confeſſion of theft by the accuſed; and he deny; or be ſilent; ſuch evidence is not ſufficient for his conviction.† Nor is a confeſſion of having taken property, without an expreſs declaration that it was ſtolen. And both the proſecutor and witneſſes are permitted to uſe terms, in their depoſitions, which may ſecure the right of property to the owner; without ſubjecting the party accuſed to the puniſhment of theft.‡

Penalty for theft, on conviction; with reſtrictions on execution of it.

THE penalty to be adjudged on a legal conviction of the crime of theft, when the property ſtolen by the convict amounts to ten *dirms*, is, for the firſt offence, amputation of the right hand, and for the ſecond, amputation of the left foot. In the event of any further repetition of the offence, he is to be impriſoned till he ſhew ſigns of reformation, or eventually for life. And diſcretionary puniſhment (*Tázeer* or *Seeáſut*) extending to death, may be inflicted, if the circumſtances of the caſe appear to require it.§ If the left hand, or right foot, of the convicted thief be paralytic; or have been loſt by accident; his right hand, or left foot, is not to

* *Moheet*, quoted in *F. Á.*

† *Tátárkhâneeyah*, quoted in *F. Á.*

‡ *Sirájeeyah*, quoted in *F. Á.*

§ *Hid.* Vol. II, of Trans. p. 107. and *Sirájeeyah*, quoted in *F. Á.* The terms of the latter are "The *Imam* may put the thief to death, for the purpoſe of *Seeáſut*, or exemplary puniſh-"ment, as he is a practiſed diſturber of the peace" SHAFIÎEE, on the authority of a tradition from the prophet, which is not admitted by ABOO HUNEEFAH and his diſciples, maintains that the left hand is to be cut off for the third, and the right foot for the fourth, offence.

be amputated; that he may not be deprived of the power of holding, or walking; or of the uſe of two members on the ſame ſide. The rule is equally applicable if the thumb, or any two fingers, of the left hand, be loſt or uſeleſs, as in ſuch a ſtate the hand is conſidered incapable of performing it's office; but this inability is not ſuppoſed, when one finger only of the left hand is loſt, or uſeleſs; and the amputation of the right hand is not therefore prevented by it*. Nor is the amputation of the right hand prevented by any paralytic affection of that hand, or any defect in the fingers of it†. If however the toes of the right foot have been loſt, ſo as to prevent the party's walking with that foot, amputation of the right hand is not to be adjudged‡. A previous loſs of the left foot does not prevent the right hand being cut off, nor does a previous loſs of the right hand prevent amputation of the left foot§. If ſentence be paſſed for cutting off the right hand of a thief; and the executioner, either intentionally, or by miſtake, amputate the left hand; according to ABOO HUNEEFAH, no reſponſibility is incurred; but his two diſciples hold the executioner reſponſible, if his act were intentional‖. All agree however that no reſponſibility attaches, if the thief himſelf put forth his left hand and ſay "This is my right hand." And that, as the amputation of the left hand is not the preſcribed puniſhment for theft, the thief remains anſwerable for the value of the property ſtolen; which he is not when the right hand is cut off according to law, on a general principle, that amputation and reſponſibility for property (beyond the reſtitution of ſtolen goods forthcoming) cannot be united¶.

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* *Hid.* Vol. II, of Trans. p. 109.

† *Tubeen* quoted in *F. A.*

‡ *Muhſoot* quoted in *F. A.* The ſame bar muſt be underſtood, *a fortiori*, to the amputation of the left foot, when the right cannot be uſed.

§ *Tuhávee* and *Moheet* quoted in *F. A.*

‖ See their different arguments in trans. of *Hid.* Vol. II, p. 110.

¶ *Hid.* Vol. II, of Trans. p. 111.

Numerous provisions for dispensing with the punishment of mutilation.

But as in other cases of *Hudd*, where the fixed penalty is severe and against the feelings of humanity, numerous provisions have been made by the legislator for dispensing with, or rather evading, the law, by qualifications, restrictions, and conditions; some one of which must so frequently intervene, as to render actual mutilation for theft of rare occurrence; except in cases of enormity, attended with circumstances that appear to justify and require an example of determent.

Examples of cases, in which the penalty is, or is not, incurred.

A person stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each other; as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation.* A husband, or wife, stealing the property of each other, or a slave stealing the property of his master, or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other.† In like manner a master, stealing the property of his slave for whom a ransom is stipulated, or whom he has

* *Hid.* Vol. II. of Trans. p. 98 And *Fut,h ool Kudeer*, quoted in *F. A.*

† *Hid.* Vol. II. of Trans. p. 99. And *Ghayut ool biyan*, quoted in *F. A.* In the *Sraj-i-wuhhaj* the same principle is applied to a divorced wife, during the period of her *Iddut*: as well as to the case of a thief marrying the woman, whose property he has stolen; even although sentence of amputation should have been previously passed against him. In the *Moheet* a slave's stealing from his master's father or mother, or any of his master's relations within the prohibited degrees, is declared to be exempt from amputation, in like manner as if the master himself had committed the theft.

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licenſed to trade, is not ſubject to amputation, unleſs, in the latter inſtance, the ſlave have contracted a debt, in which caſe his property is conſidered to be in pledge for his creditor.* Amputation is not incurred for ſtealing property out of a public bath, or from a houſe of general reſort, in the day time; when the cuſtody of ſuch places is queſtionable. But for theſts in the night time, when ſtrangers are not allowed ingreſs, the preſcribed penalty is to be inflicted.† If a gueſt ſteal the property of his hoſt, he is not liable to amputation; as he has been allowed to enter the houſe; and his offence is conſidered to be rather treachery than theft.‡ Nor is a ſervant ſubject to the ſtated penalty for ſtealing the property of his employer, out of an apartment to which he is allowed acceſs §. In caſes of burglary, if a thief break through the wall of a houſe, enter and take property, and be ſeized before he has carried it out of the houſe, amputation is not incurred; nor is it, if he give the property, at the entrance of the breach, to an accomplice ſtanding without; becauſe the thief who enters the houſe does not carry out the property, which previouſly to his coming out of the houſe, falls into the poſſeſſion of another; and the thief who receives and takes away the property has not committed any violation of cuſtody. The whole of the conditions of theft therefore are not found in this inſtance. But if the thief, who enters the houſe, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of ABOO YOOSUF; from whom it is further recorded, that if the thief within the houſe put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach, into the houſe,

* *Moheet*, quoted in *F. Á.* And *Hid.* Vol. II. of Trans. p. 100.

† *Hid.* Vol. II of Trans. p. 102. And *Ikhtiyár*, quoted in *F. Á.*

‡ *Hid.* Vol. II. of Trans. p. 102.

§ *Siráj-i wuhháj*, quoted in *F. Á.*

and

and thus take the property from the other within.* The principle which governs the latter caſe is the ſame as that of a party of thieves, who enter a place of cuſtody, and ſome take away the property, whilſt the oth rs ſtand by; in this caſe, the whole incur amputation, as in robbery by open violence; becauſe the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence.† But according to the *Záhir ḥó' ruwáyát* the violation of cuſtody muſt be completed, by the entrance of the thief into the place of cuſtody, whenever this may be practicable; and therefore if a perſon make a breach in the wall of a houſe, put his hand through, and take out property, without entering the houſe, he does not incur amputation.‡ If a thief break a hole in a houſe, and go away, and the owner of the houſe, though he obſerve the hole, or though it be viſible to paſſengers, omit to cloſe it; and the thief return another night, and take property from the houſe; amputation is not incurred. Nor is it for two or more ſucceſſive thefts, each of leſs than ten *dirms*, if the owner, after being adviſed of the firſt theft, neglect to repair the breach. But if the owner be not adviſed, the value of the ſeveral thefts may be computed collectively§. If a perſon keep his money tied in his ſleeve in ſuch a manner that the knot containing it is within the ſleeve, and a cut-purſe ſteal it by putting his hand under the ſleeve, and tearing away the part which contains the money, he is liable to amputation; as he alſo is if the knot be tied on the outſide, and on being opened the money fall within the ſleeve,

* *Hid.* Vol. II. of Trans. p 103. And *Fut. Kurkhee* quoted in *F. Á.* But it is added that ABOO HUNEEFAH, in the caſe laſt ſtated, does not conſider either of the parties liable to amputation. The author of the *Niháyah* alſo remarks, on the caſe of a thief throwing effects out of a houſe, near the breach, and afterwards carrying them away, that the better opinion is againſt amputation.

† *Hid.* Vol. II. of Trans. p. 105.

‡ *Hid.* Vol. II. of Trans. p. 105. ABOO YOOSUF maintains that the hand of the thief ſhould be ſtruck off; becauſe he has taken the property out of a place of cuſtody; which is ſufficient to conſtitute theft, without perſonal entrance.

§ *Siráj-i-wuhháj*, quoted in *F. Á.*

and is taken from thence by the thief. But if the knot be on the outſide and torn away; or on the inſide, and opened from without, the penalty is not incurred; the interior part of the ſleeve, which is conſidered the place of cuſtody, not being violated in the two latter inſtances.* If a perſon ſteal one of a ſtring of camels, or a load from one of them, he is not liable to amputation; from a doubt whether the camel be in legal cuſtody: unleſs there be a guard (excluſive of the driver, or rider) for the expreſs purpoſe of watching the camels; in which caſe the penalty is incurred: as it alſo is, if the thief break open a package, and take away it's contents, whilſt under perſonal cuſtody.† If ſome of a party of travellers ſteal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common.‡ If a perſon enter a houſe by unlocking the door with a falſe key, in the day time, and take away the effects when no perſon is preſent, he is not ſubject to amputation. But if any of the family be in the houſe and not privy to the theft, the preſcribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and ſteal, he is not liable to amputation. But if the door be ſhut, though not faſtened, and he enter clandeſtinely and take away property, it is ſtated in the *Hávee* that he incurs the penalty of theft: as he alſo does if he enter the houſe at night, and take away property either by ſtealth or force, after the hour of evening prayer; unleſs his entering the houſe be known, at the time, to the owner.§ It is further ſtated in the *Hávee*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten *dirms*, be ſtolen from the encloſure, amputation is incurred, whether the owner be preſent or not. But for cattle ſtolen from paſture

* *Hid.* Vol. II. of Trans. p. 105. And *Káfee* quoted in *F. Á.*

† *Hid.* Vol. II. of Trans. p. 106. Alſo the *Siráj-i-wuhháj* and *Zukheerah*, quoted in *F. Á.*

‡ *Sirájeeyah*, quoted in *F. Á.*

§ *Mohect*, quoted in *F. Á.*

ground,

ground, the penalty of theft is not due, unleſs there be a watchman with them, for the expreſs purpoſe of guarding them.*

Deſcriptions of property, for ſtealing which amputation is not incurred.

AMPUTATION for theft is not incurred on account of things which, in their original nature, were of common uſe, and which in their actual ſtate, are not eſteemed a valuable property; ſuch as wood, canes, graſs, fiſh, fowls, game, brimſtone, limeſtone, red-earth, mud, clay, dung, and ſimilar articles; ÂÁ,ÉSHAH, the wife of MOHUMMUD, having declared that in the prophet's time the ſtated penalty was not inflicted for ſuch petty thefts; and the exemplary puniſhment of them is not judged requiſite; beſides which the cuſtody of ſome of the articles ſpecified is eſteemed defective.† Nor is amputation incurred for the theft of things which quickly ſpoil and decay; ſuch as milk, fleſh, and fruit (excepting dried dates, or other fruit kept in ſtore) the prophet having expreſſly interdicted it for theſe articles.‡ Nor for fruit upon the tree, or grain upon the ſtalk; theſe not being conſidered in cuſtody. Nor for any intoxicating liquor; which is illegal or doubtful property§. Nor for a drum, or other muſical inſtrument of ſmall value, and uſed for amuſement only‖. Nor for a *Korán*, though ornamented; as the cuſtody of it is on account of it's contents, not for the binding or ornaments; and moreover the perſon taking it may plead that his intention

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* *Zukheerah*, quoted in *F. Á.*

† Trans. of *Hid.* Vol. II, p. 87. Alſo the *Moheet* and *Káfee*, quoted in *F. Á.* But utenſils made of wood, *Bughdád* mats, and other articles of which the workmanſhip may be more valuable than the utenſils, are declared ſubjects of cuſtody and of theft. ABOO YOOSUF, and SHAFI'EE further maintain, that amputation is incurred by the theft of any article to the preſcribed value, except mud, clay, and dung.

‡ Trans. of *Hid.* Vol. II, p. 88, And *Siráj-i wuhháj* quoted in *F. Á.* Alſo the *Zukheerah*, including dried, as well as freſh fruits, in years of ſcarcity.

§ *Hid. Trans.* Vol. II, p. 89, and *Tumurtáſhee* quoted in *F. Á.* with extenſion of the principle to pork, hawks, and birds in general,

‖ Trans. of *Hid.* Vol. II, p. 89. and 92. But a flute made of any ſcarce or valuable wood is excepted; and declared to be an object of cuſtody, as held in eſtimation. The author of the *Moheet* alſo ſtates a difference of opinion with reſpect to a military drum, if ten *dirms* in value; as this is not in uſe for amuſement.

was-

was to read it only*. Nor for any other book, except a book of accounts, the contents of which not being the object of the theft, the paper, and other materials of which it is compoſed, are deemed appretiable property.† Nor for the door of a moſque, as this is not an object of cuſtody‡. Nor for a crucifix, cheſs-board, or cheſs-pieces, though of gold; as the thief may excuſe himſelf by ſaying that he took them with a view to deſtroy them; being things prohibited§. Nor for ſtealing a free-born infant, with ornaments on his body; becauſe a free perſon is not property; and the ornaments are appendages only; beſides which the thief may plead that he took up the infant, when crying, with a view to appeaſe it, or to deliver it to it's nurſe‖ Nor for ſtealing an adult ſlave; as ſuch an act is aſcribed rather to violence, or fraud, than to theft; but if an infant ſlave be ſtolen, according to ABOO HUNEEFAH, and IMÁM MOHUMMUD, amputation for theft is incurred; but ABOO YOOSUF holds a different opinion, on the ground that a ſlave, though conſidered to be property as ſuch, is not property with regard to his original nature, as a man.¶ Nor for a dog, or lynx; becauſe ſuch an animal is free by nature, and there is a difference of opinion reſpecting the property of them**. A breach of truſt does not incur amputation; as the article entruſted is not in cuſtody of the proprietor. Nor is it incurred by openly

Other deſcriptions of theft which do not incur amputation.

* *Hid.* Vol. II, of Trans. p. 89, 90, SHAFI,EE, and ABOO YOOSUF maintain a different opinion.

† *Hid.* Vol. II. of Trans. p. 92. Alſo *Siráj-i-wuhhâj* and *Moheet*, quoted in *F. Á.*

‡ *Hid.* Trans. Vol. II, p. 90, The door of a houſe is alſo not conſidered an object of cuſtody, unleſs it be ſeparate and portable. See Vol. II, Trans. of *Hid.* p 93. Alſo *Tubeen* quoted in *F. Á.*

§ *Hid.* Vol. II, of Trans. p. 90, and *Jouhurah-i-Nyyurah*, quoted in *F. Á.*

‖ *Hid.* Vol. II, of Trans p. 91, and *Siráj-i-wuhhâj*, quoted in *F. Á.* ABOO YOOSUF conſiders amputation due for ſtealing the ornaments, if the value of them be ten *dirms*.

¶ *Hid.* Vol. II, of Trans. p 91. Alſo *Futh ŏrl Kudeer*, and *Nuhr-i-fâyik* quoted in *F. Á* It is added, in the latter, that the principle ſtated, relative to an adult ſlave, is applicable, although the ſlave be an ideot, or mad or aſleep, when he is ſtolen. It is further ſtated, in the *Moheet*, that amputation is incurred for the theft of an infant ſlave worth five *dirms*, with ornaments on him for the value of five *dirms* more.

** *Hid.* Vol. II, of Trans p. 92, and *Tumurtâſhee* quoted in *F. Á.* It is added from the *Mŏcnuhu*, as cited in the *Zukheerah*, that amputation is not to be inflicted, although the dog have on his neck a collar worth a hundred *dirms*.

ſeizing

ſeizing or ſnatching away a thing, as ſuch an act is not theft; and the prophet has ſaid that "the hand of a plunderer, or "ſnatcher of property, or of a truſt-breaker, is not to be cut "off."* A *Nubbáſh* or ſtealer from the dead, viz. of a winding ſheet, or other apparel of the dead, is alſo not liable to amputation, according to ABOO HUNEEFAH, and IMÁM MOHUMMUD; though ABOO YOOSUF and SHAFIÎEE maintain that he is †. If a perſon ſteal property of which he is, in part, owner, he is not ſubject to amputation. And on the ſame principle, it is not incurred by any *Moſulman*, ſtealing from the public treaſury in a MOHUMMUDAN ſtate; as every thing in it is conſidered to be the common property of *Moſulmans*, and the thief has conſequently a ſhare in it ‡. Laſtly, if a creditor ſteal from the property of his debtor, to the amount of his debt only, amputation is not incurred; as this is deemed to be an enforcement of right, not theft§.

A SENTENCE of amputation cannot be paſſed upon a thief, without the attendance and proſecution of the perſon whoſe property has been ſtolen; or his repreſentative. The reaſon aſſigned in the *Hidáyah* is, "becauſe proſecution is eſſen- "tial to the manifeſtation of theft; and, with reſpect to this "rule, it matters not whether the theft be eſtabliſhed by con- "feſſion, or by evidence; becauſe an offence, committed "againſt the property of another, can, in no way, be ren- "dered manifeſt, but by the proſecution of the aggriev-

Further requiſites, for the proſecution of a charge of theft; and puniſhment of the offender.

* *Hid.* Vol. II, of Trans. p. 93.

† See their reſpective arguments in Trans. of *Hid.* Vol. II, p. 94. In the *Siráj-i-wuhháj* and *Káfee*, quoted in the *F. Á.* the exemption from amputation is extended to a theft of money, or effects, from a coffin, or ſepulchre: though a difference of opinion is ſtated to have obtained in the caſe of a locked apartment.

‡ *Hid.* Vol. II, of Trans. p. 94, 95. Alſo *Nihayah* and *Tubeen* quoted in *F. Á.* In the former the principle is extended to property taken in war, and declared to be equally applicable to ſlaves and freemen.

§ *Hid.* Vol. II, of Trans. p. 95, and *Siráj-i-wuhháj* quoted in *F. Á.* There is a difference of opinion, if the creditor, inſtead of taking money, ſteal the effects of his debtor: as he is not at liberty to ſeize and diſpoſe of ſuch without the debtor's conſent. But ABOO YOOSUF contends that the creditor may ſeize the goods of his debtor, to obtain his right, or by way of pledge; and ABOO HUNEEFAH and IMÁM MOHUMMUD admit the plea to be ſufficient for remitting the puniſhment of theft, on the ground of ABOO YOOSUF's opinion.

ed."* Beſides the owner of the property ſtolen however, a depoſitary, a borrower with or without intereſt, a hirer, an uſurper, a partner in concerns of *Mozarubut*, or *Mooſhubzâ*, a mortgagee, a father, or any other legal guardian, having poſſeſſion of the ſtolen article, is declared competent to proſecute in caſes of theft.† If the ſtolen property be again ſtolen from the poſſeſſion of the firſt thief, and the latter have ſuffered amputation, it cannot be demanded againſt the ſecond thief; but if the firſt thief be not convicted, or have not undergone the puniſhment for theft, it may be enforced, at his requiſition, againſt the ſecond thief‡. If the ſtolen property be returned by a thief to the owner before any proſecution is inſtituted againſt him, he cannot be ſentenced to ſuffer amputation. But this ſentence is not prevented by a reſtoration of property after the charge is preferred, and evidence adduced in ſupport of it §. Execution of a ſentence for amputation is ſtayed however by the gift or ſale of the ſtolen property from the owner to the thief; whether prior or ſubſequent to the judgment of the *Kázee* ‖. Amputation is likewiſe ſtopped, if, after the ſentence, a reduction in the market value of the ſtolen article bring it below the legal ſtandard of ten *dirms*; but this principle does not apply to any other deterioration, from damage to the property, or any cauſe excepting a fall of price ¶ It is declared in the *Hidayah* that "if, after witneſſes bearing

* Trans. of *Hid.* Vol. II, p. 112. Alſo *Zád ool ſokhá* quoted in *F. Á.* In the latter, Aboo Yoosuf is ſtated to have maintained an opinion, that a thief might ſuffer amputation whether the perſon robbed be preſent or not. And a ſimilar opinion is noticed in the Perſian and Engliſh Tranſlations of the *Hidáyah* (but not in the Arabic original) as entertained by Shafi,ee when the thief is convicted on his own confeſſion.

† *Hid.* Vol. II, of Trans. p. 112, and *Káfee* quoted in *F. Á.* Shafi,ee and Zoofur deny the right of proſecution to any except the proprietors.

‡ See the reaſoning upon which this diſtinction is founded, in Trans. of *Hid.* Vol. II, p. 115.

§ *Hid.* Vol. II, of Trans. p. 116.—Alſo *Káfee* quoted in *F. A.* Aboo Yoosuf maintains that amputation may be adjudged, whether the property be reſtored before, or after, the accuſation.

‖ *Hid.* Vole II, of Trans. p. 116. Alſo *Fut,h ool Kudeer* quoted in *F. Á.* Shafi,ee and Zoofur (with Aboo Yoosuf according to one report) differ from the opinion ſtated. See the argument in Trans. of *Hid.*

¶ *Hid.* Vol. II, Trans. p. 117, and *Mohrit* quoted in *F. Á.*

evidence

" evidence to a theft, the thief plead that the article, alleged " to have been ſtolen, is his own property; his hand is not to " be cut off; although he produce no evidence in ſupport of " his plea."* SHÁFIÎEE juſtly objects to this doctrine, " that, " every thief has it in his power to plead the property being " his own; and therefore if puniſhment be remitted on ſuch " a plea, the door of it muſt be altogether cloſed." But the *Huneefeeyah* doctors reply, that " doubt occaſions the remiſ- " ſion of puniſhment; and doubt is eſtabliſhed by the plea, " ſince it may poſſibly be true." They add that SHÁFIÎEE's objection is of no weight " becauſe retraction and denial are " admitted after confeſſion, although a perſon confeſſing have " it always in his power to retract and deny." But this reaſoning, however applicable to confeſſions, when there may be no other proof, is obviouſly inapplicable to a caſe eſtabliſhed by evidence; and SHÁFIÎEE's objection to the prevalent doctrine therefore remains, as noticed by Mr. HAMILTON, " altogether unanſwered:" or, at leaſt, unrefuted. The ſame rule is applied in the *Hidáyah* to the caſe of two perſons confeſſing a theft, one of whom afterwards pleads that the property was his own. In this caſe, it is ſtated, " amputation is not inflicted upon either; becauſe the retraction is admitted with reſpect to the perſon retracting; and this gives riſe to a doubt in regard to the other perſon; ſince theft is confeſſed by each of them as a joint act."† Evidence of a theft jointly committed by two perſons, one of whom only is preſent and on trial, will however convict the one preſent, without waiting the attendance of the abſentee.‡ On a trial for theft, if the perſon, whoſe property is ſaid to have been ſtolen, declare, even after conviction and ſentence, that the property belonged to the party accuſed, and was held in truſt for him; or that the wit-

* Trans. of *Hid.* Vol. II. p. 118. Alſo *Moheet*, quoted in *F. Á.* in which the principle is firſt ſtated with reſpect to a caſe of confeſſion; and extended to one founded upon evidence; perhaps by inadvertency.

† Trans. of *Hid.* Vol. II. p. 118, with verbal alteration.

‡ *Hid.* Vol. II. of Trans. p. 118.

neſſes

neſſes againſt him have given falſe evidence; or (if he have confeſſed) that his confeſſion is erroneous; or make any other declaration, whereby a doubt can ariſe of the guilt and legal conviction of the priſoner, he is not to ſuffer amputation.* Other caſes, in which a ſentence of mutilation, or the execution of it, is prevented, are detailed in the *Futáwa i Álumgeeree:* but a further ſpecification of them appears unneceſſary. It will be ſufficient to add, that any ſtolen property found in the poſſeſſion of a thief muſt be reſtored to the owner; and that the latter has an option to demand the value of his property, or the preſcribed puniſhment, previouſly to execution of the ſentence; but after ſuffering amputation, the thief is not further anſwerable for the property.† Any ſale or gift of ſtolen property by the thief is however declared null and void. And if another perſon, after puniſhment of the thief, deſtroy or conſume it, he is anſwerable to the owner for the value of it.‡ One puniſhment for theft, by amputation, as in other caſes of *Hudd*, includes all paſt inſtances; but does not preclude a further puniſhment for any future repetition of the offence; as far as the reſtrictions before ſtated, concerning amputation, may admit of it.§

Stolen property forthcoming muſt be reſtored to the owner; who, previouſly to the thief's being puniſhed, may demand from him the value of property taken, but not afterwards.

Sale or gift of ſtolen property invalid. And poſſeſſors anſwerable to the owner.

One amputation for theft, includes all paſt inſtances.

Surikah-i-kobrá, or, as it is otherwiſe termed, *Kitá ööl tureekee*, meaning literally, *cutting off the highway*, and technically, *highway robbery*, is thus defined in the *Hidayah*. "When a party go forth, with force capable of reſiſtance, "for the purpoſe of committing robbery; or when a ſingle "perſon goes forth with that intent, prepared for reſiſtance, "under confidence in his ſtrength and courage; the party ſo "acting is called *Ruhzun*, in the Perſian language, and *Kitá*

Surikah-i-kobrá, alſo called *Kitá ööl tureekee*, how defined; and what circumſtances requiſite for enforcing penalty of it.

* *Mobeet*, quoted in *F. Á.*

† *Hid.* Vol. II. of Trans. p. 122, with *Mobeet* and *Sirái-i-wuhháj*, quoted in *F. Á.* SHAFI'EE maintains that ſatisfaction for ſtolen property is due, in addition to the puniſhment of amputation.

‡ *Mobeet*, and *Eezáh*, quoted in *F. Á.*

§ *Hid.* Vol. II. of Trans. p. [illegible] And *Eezáh*, quoted in *F. Á.*

"*ŏol tureek* in the Arabic." In the *Záhir ŏo ruwáyát* and *Tátárkhánceyah*, cited in the *Futáwá i-Âalumgeeree*, the following circumſtances are mentioned, as requiſite to the enforcement of the law againſt a *Kitâ ŏol tureek*, or highway robber. 1. That by himſelf, or with his aſſociates, he have power and force ſufficient to overcome any oppoſition from travellers, and to ſtop their paſſage; whether he be armed with a mortal weapon, or with a large ſtaff, or with a ſtone; or any thing elſe. 2. That he commit the act charged, without, and at a diſtance from, any city. In the *Yunabeeâ* it is ſtated that, to conſtitute the crime of highway robbery, it muſt not take place between two cities, towns, or villages; and that there muſt be the diſtance of a journey, of three days and three nights, between the robbers and a city. But ABOO YOOSUF declared, that he would convict of highway robbery, though within the diſtance of a journey from a city, or even within a city, if it were a night robbery, committed on the highway. And *Futwás* are paſſed according to this opinion.* 3. That the crime be perpetrated within the limits of a *Moſulman* ſtate, *(Dár ŏol Iſlám)*. 4. That all the conditions of the minor ſpecies of larceny *(Surikah i-ſoghrá)* be found in this ſpecies alſo; and that all the robbers be ſtrangers to the party or parties robbed; as well as perſons legally ſubject to puniſhment. 5. That the robbers be ſeized by the *Imám* before they repent; as well as prior to a reſtoration of property to the perſon robbed.

* The opinion of ABOO YOOSUF, as ſtated in the *Hidáyah*, is, that "puniſhment is incurred "by him who commits a robbery without the precincts of a city, although it be in the neighbourhood, becauſe there no aſſiſtance can be had. And if robbers make an affray in a "city, during the day, with mortal weapons; or during the night, either with mortal weapons, or with ſticks and ſtones; they are to be accounted highway robbers; becauſe mortal weapons are too quick in their effect to admit of aſſiſtance coming; and in the night "aſſiſtance comes ſlowly." But it is objected by ABOO HUNEEFAH and his followers, "that "highway robbery ſignifies attacking paſſengers upon the highway; which does not apply to "cities or inhabited places in their vicinity, becauſe it is evident that in ſuch places aſſiſtance "may be procured." The robbers deſcribed are not therefore puniſhable under the law of *Hudd* as highway robbers; though they may be impriſoned and corrected, and may be compelled to make reſtitution of any property plundered by them. Moreover, if they have ſlain any perſon they may be proſecuted by the heirs for *Kiſás*. See Trans. of *Hid.* Vol. II, p. 137.

Four deſcriptions of robbers ſpecified in the *Hidáyah*, with the penalties incurred by them reſpectively.

FOUR deſcriptions of highway robbers are ſpecified in the *Hidáyah*, with the penalties incurred by each, upon conviction, according to their reſpective degrees of criminality. Firſt, Thoſe who are ſeized before they have robbed, or murdered any perſon, or put any perſon in fear. Secondly, Thoſe who have committed robbery only; whether upon a *Moſulman*, or infidel ſubject.* Thirdly, Such as have perpetrated murder without robbery. Fourthly, Such as have committed both robbery and murder. Of theſe deſcriptions, the firſt are to be impriſoned, until by their appearance and demeanor they ſhew evident ſigns of contrition. The ſecond are to ſuffer amputation of the right hand and left foot; provided the property taken be of ſuch value, as, when divided amongſt the whole of the robbers, amounts to ten *dirms* for each. The third claſs are to ſuffer puniſhment (*Hudd*) of death; and as it is inflicted by the right of GOD, for public example, (in oppoſition to the private right of *Kiſás*) the forgiveneſs of the heir of the ſlain is of no avail. With reſpect to the fourth and laſt claſs, it is optional with the *Imám*, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation. He may alſo order them to be crucified.† It is further ſtated in the *Hidáyah*, that if a robber, in the predicament firſt mentioned, (viz. who may be ſeized before he has committed robbery or murder) maim or wound a perſon or perſons, there is no diſtinct ſpecific penalty (under the proviſions of *Hudd*) for the maiming or wounding; but he is liable to retaliation, or the fine of blood, under the rules of *Kiſás* for offences ſhort of life, at the demand of the perſon upon whom the

Other caſes ſtated in the *Hidáyah*, of maiming, or wounding, by robbers.

* It is reſtricted to theſe becauſe the property of an alien, not being under permanent protection, the law of *Hudd* does not extend to it.

† *Hid.* Vol. II. of Trans. p. 130. IMÁM MOHUMMUD reſtricts the option of the IMÁM to immediate death, or crucifixion: and does not admit its extenſion to amputation, in addition. See the argument on this point, as well as whether the crucifixion ſhould be after, or before, death, in Trans. of *Hid.* The ſtated penalties are alſo quoted from the *Kúfee*, in the *F. A.* with the addition of *Tázeer* to impriſonment, in the firſt caſe, of ſeizure before robbery.

offence

offence has been committed. If the robber have both plundered and wounded, he is to ſuffer the penalty of amputation (as one of the ſecond deſcription of robbers); and neither fine or retaliation can be demanded for the perſonal injury; the public puniſhment, as with reſpect to property in caſes of theft, ſuperceding the enforcement of private ſatisfaction. In like manner, if a robber ſuffer death, in execution of a ſentence of *Hudd*, nothing is due to the perſon robbed, beyond a reſtitution of the property forthcoming, as already ſtated with reſpect to theft.*

The whole of a gang of robbers puniſhable for murder committed by any one of them.

If any one among a gang of robbers commit murder, the whole are liable to the preſcribed penalty; "becauſe," ſays the author of the *Hidayah*, "the puniſhment is, in this inſtance, conſidered as a penalty for the aſſault of the whole; which is eſtabliſhed by each of them being aiding and abetting to the others.† But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the perſon robbed, or murdered; or if any of the robbers have a joint intereſt in the property plundered; or ſuch property be not in legal cuſtody with reſpect to any one of the robbers; or if the property taken amount not in value to ten *dirms* for each robber; or laſtly, if the perſon robbed or murdered be not a Moſulman, or under the permanent protection of a MOHUMMUDAN Government; a ſentence of *Hudd* is prevented, againſt any of the

Exceptions, in this and other caſes, which bar a ſentence of *Hudd*.

* *Hid.* Vol. II. of Trans. p. 133. And *Siráj-i wuhháj* quoted in *F. Á.*

† Trans. of *Hid.* Vol. II. p. 133. And *Ikhtiyár*, quoted in *F Á.* The juſt principle ſtated is conſidered by ſome MOHUMMUDAN lawyers, on the authority of ABOO YOOSUF's opinion before cited, to be applicable to all crimes committed by open violence, and by a number of perſons aſſiſting and ſupporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited; or in any other place whatever: but according to the prevalent doctrines, this proviſion of the Moſulman law cannot be applied to robberies committed in any other place, than on, or near, the highway; at a diſtance from any inhabited place. See Preamble to Reg. LIII, 1803.

party.

party.* This ſentence is alſo barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the *Korán*, concerning robbers, that "the "fixed penalty *(Hudd)* ſhall be inflicted upon them, except- "ing ſuch as repent before the magiſtrate lays his hands upon "them." But the right of the individual, for private ſatisfaction, holds in this caſe; under the rules of *Kiſás*; and the robbers are reſponſible for the property taken by them.† A robber delivering himſelf up, with the property, or the value of it, is not to be proſecuted for the ſtated puniſhment; nor is any penalty to be inflicted for an old offence, upon a perſon, who long before his trial, has ceaſed to rob, and follows an honeſt livelihood.‡

Third head of criminal law, *Tázeer* and *Seeáſut*. What offences included in it.

IT remains only to ſpeak of the third and laſt general head of MOHUMMUDAN criminal law, *Tâzeer* and *Seeáſut;* or diſcretionary correction, and puniſhment. It has been already obſerved, that this head includes all offences not expreſsly provided for by the laws of *Hudd* and *Kiſás;* as well as the crimes to which ſpecific penalties are attached by the general proviſions of thoſe laws, when the particular application of them may be prevented by ſome circumſtance of exception, doubt, or legal defect. But offences of the firſt deſcription, viz. thoſe not comprized in the ſtated rules of *Hudd* and *Kiſás*, are diviſible into two diſtinct claſſes. 1. Petty offences of a private nature, or of inconſiderable public detriment, for which the offender is liable to chaſtiſement, with a view chiefly

* The proviſions for public puniſhment failing however, the right of private ſatisfaction is open to a proſecution for *Kiſás*. ABOO YOOSUF is of opinion, that the rule ſtated with reſpect to infants and lunatics (which is founded on the doctrine of ABOO HUNEEFAH and ZOOFUR) ſhould obtain only when the infant or lunatic is the actual perpetrator of the murder or robbery; not when the perpetrator is of mature age, and ſound underſtanding, though there be an infant or lunatic in the party. The ſame difference of opinion prevails in caſes of theft. See the argument at length in Trans of *Hid.* Vol. II. p. 135. The exemption of a dumb perſon from puniſhment, on the ground of his not being able to plead in his defence, is ſtated in the *Moheet*, as quoted in *F. A.*

† *Hid.* Vol. II. of Trans. p. 134.

‡ *Moheet* and *Sirájeeyah*, quoted in *F. A.*

to

to his (or her) perſonal correction and amendment. 2. Heinous and flagrant crimes, of dangerous tendency, or extenſive injury to ſociety, for which the criminal is ſubject to capital or other exemplary puniſhment, with a view to deter others from the commiſſion of the like offence. Caſes of exception from the ſpecific penalties of *Hudd* and *Kiſás* are alſo ſubdivided in two claſſes. Firſt, when the proof of ſuch crimes having been committed by the accuſed may not be ſuch as the law requires for a ſentence of *Hudd* or *Kiſás*, though ſufficient to eſtabliſh a ſtrong preſumption of guilt. Secondly, when the accuſed is legally convicted of the fact, but a judgment of *Kiſás* is barred by a remiſſion or compromiſe of the claim to retaliation; or ſuch judgment, or a ſentence of *Hudd*, is prevented by ſome incidental circumſtance, which, as explained under the preceding heads, exempts the convict from the ſtated penalty, but leaves him ſubject to diſcretionary puniſhment. The two claſſes laſt mentioned however are not uſually diſtinguiſhed in the proviſions for *Tâzeer*, and the diſtinction appears material only in conſidering the evidence requiſite to ſupport a conviction and ſentence upon preſumptive proof.

Tâzeer, which in its primitive ſenſe means *prohibition*, or *reſtriction*, is legally defined to be "an infliction (*Âkoobut*) "undetermined by the law, on account of the right of GOD, "as well as for the rights of individuals;" or in other words, for the ends of public, as well as private, juſtice; and it is declared to be incurred by any offence, whether of word or deed, not ſubject to a ſpecific legal penalty.* In the *Nihayah*, one of the commentaries on the *Hidáyah*, and quoted

Definition of *Tazeer*.

* See the ſtated definition (with verbal alterations) in Trans. of *Hid.* Vol. II, chap. entitled *Tâzeer*. It is however taken from the Perſian verſion, not from the Arabic original, which begins with the example of "chaſtiſement due for ſlandering a ſlave, or an infidel." Page 77 of Engliſh Trans. The Perſian Tranſlators appear to have given their introduction to the chapter in queſtion, partly from the authorities cited by them, TUMURTÁSHEE, SURUKHSHEE and SHAFEE; partly from the commentaries on the *Hidáyah*.

by the compiler of the *Futáwá-i-Áálumgeeree*, *Tâzeer* is defined to be "chaſtiſement leſs than the penalties of *Hudd*, "for offences not ſubject to *Hudd*." But this reſtriction is applicable only to the firſt deſcription of offences above noticed, thoſe of a trivial nature; and, upon other legal authorities, is underſtood to have a ſpecial reference to *Tâzeer* by flagellation; which, in obedience to a tradition from the prophet, implying that "the perſon who inflicts ſcourging to the extent "of *Hudd*, in a caſe where *Hudd* is not preſcribed, ſhall be "deemed an aggravator," is limited, according to ABOO HUNEEFAH and IMÁM MOHUMMUD, to thirty-nine ſtripes; being one leſs than the loweſt preſcribed penalty; viz. that of forty ſtripes for ſlandering a ſlave.* The word *Seeâſut*, which in its original ſenſe denotes *protection*, is uſed, technically, to expreſs exemplary puniſhment, ſuch as the ruler, or his judiciary delegate, may deem expedient for the protection of the community from atrocious offenders, who commit the ſecond claſs of crimes above defined; eſpecially ſuch as are habituated to the commiſſion of ſuch crimes; and whom there can be no hope of reclaiming from their evil courſes by ſlight or temporary correction.† In ſuch caſes there is no limitation to the exerciſe of a ſecond diſcretion; and in ſome inſtances it is expreſsly declared to extend to death.‡

and of *Seeâſut*.

Order obſerved in the following remarks.

IN an attempt to illuſtrate the principles and rules of the diſcretionary correction and puniſhment ſanctioned by the MOHUMMUDAN law, for offences not falling within its ſpecific proviſions, or excepted from them by ſpecial circumſtances, it will be perſpicuous to ſtate, in the firſt inſtance, what

* ABOO YOOSUF takes the ſmalleſt penalty, under the proviſions of *Hudd*, for a freeman; which being eighty ſtripes, he deducts five, after the example of ÂLEE, or according to another report, one only; and conſiders the reſidue, ſeventy-five, or ſeventy-nine, ſtripes, to be the limit of *Tâzeer*.—See Trans. of *Hid.* Vol. II, p. 78.

† The ſtated meaning of *Seeâſut* is expreſsly noticed in the *Buhr-i ráyik*; and it correſponds with the common uſe of the term in the *Futwas* given by the law officers of the *Nizámut Ádálut*.

‡ The *Tubeen*, *Mŏŏnyah*, and *Mŭjtuba* quoted in the *Buhr-i ráyik*.

is

is applicable to *Tâzeer*, in its moſt extenſive ſenſe; and then to diſtinguiſh what is peculiar to the ſeveral deſcriptions of offences which are comprehended in it.

Several proviſions relative to *Tazeer* and *Seeaſut*.

It has been already obſerved, under the head of juſtifiable homicide, that when an offence, liable to *Tâzeer*, has been actually committed, the magiſtrate only is authorized to puniſh the offender. In caſes where the right of God, or public juſtice, is conſidered to prevail, the *Imam*, viz. the ſovereign or his delegate, is excluſively competent to remit the puniſhment of the criminal; and even this competency is qualified by a condition of aſcertained previous repentance.* In ſuch caſes, as in other public proſecutions, the evidence of the proſecutor is admiſſible; or the offender may be brought to trial, and puniſhment, without any complaint from the party injured. But when the right of the individual is deemed prevalent, his claim, or that of his repreſentative, is requiſite, as in other inſtances of private retribution: the claimant, though incompetent to bear teſtimony in his own cauſe, is at liberty to forgive the offence; for eſtabliſhing which, moreover, ſecondary witneſſes, viz. perſons appointed by abſent witneſſes to give evidence for them, who are not admiſſible in any *public* proſecution, may be admitted; or, in defect of proof, the accuſed party may be put upon his oath†. With exception however to the authorized chaſtiſement of a wife by her huſband; of a child by the parent; and of a ſlave, male or female, by the owner; the *Tâzeer* allowed, as a private right, cannot be legally inflicted without a judicial ſentence, or the award of an arbitrator‡. In all caſes of offences againſt indi-

* *Futh ool kudeer* and *Nuhr i-fáyik* quoted in *F. A.*

† *Futáwá-i-Kázee Khán*, quoted in *F. A.*

‡ *Futh ool Kudeer* quoted in *F. A.* See alſo Trans. of *Hid.* Vol. II, p. 77. though what is there given from the Perſian verſion, reſpecting *Tâzeer* which every one is allowed to exerciſe for the prevention of a crime, at the time of an actual attempt to commit it; and that which is demandable for private injuries, by complaint to the magiſtrate, is not (as before noticed) in the *Arabic* original.

viduals,

viduals, which incur *Tâzeer*, the penalty is equally incurred whether the injured party be a *Moſulmán*, or otherwiſe.* And though, for the full legal conviction of a *Moſulmán*, the evidence of witneſſes of any other religious perſuaſion is not ſtrictly admiſſible; nor of women, though of the faith of Iſlam, if the proſecution be of a public nature, (*ba huk i ŏo'lah*)†; yet *Tâzeer* and *See ſut* may, in all caſes, be inflicted by the *Imám*, upon ſtrong preſumption, whether ariſing from the credible teſtimony of men, or women, of whatever religion, or from circumſtances which warrant a violent preſumption of guilt; as well as upon the confeſſion of the party accuſed; or the legal proof required in caſes of *Hudd* and *Kiſas*; and it is expreſsly declared, that a conviction for *Tâzeer* may be founded upon the depoſitions of the proſecutor, and one credible male witneſs, in public caſes; or, in thoſe of a private nature, upon the teſtimony of two men, or one man and two women; as in other inſtances wherein individual right only is at iſſue†. On conviction of offences ſubject to *Tâzeer*, which may not require capital or other exemplary puniſhment of the criminal as a warning to others, and in which therefore the reformation of the offender himſelf is the principal object, the *Kázee* is authorized to exerciſe a juſt diſcretion, according to the nature of the offence, and the rank and ſituation of the offender, in adjudging him to receive an admonition, ſuch as may render him aſhamed of his conduct; or a public reprimand, on perſonal arreſt, and expoſure at the door of the court; or impriſonment; or ſtripes, within the reſtriction before mentioned. Blows on the back of the neck, and pulling by the ears, are alſo legal modes of chaſtiſement; and according to ABOO YOOSUF, the offender's property may be taken and kept in depoſit till he ſhew ſigns of contrition; but is not to be finally levied as a fine to govern-

* *Fut h ŏ l Kudeer*, cited in *Lubi-i rájik*.

† *Lubi-i rájik*, quoted in Treatiſe on *Tazeer* by KÁZEE NUJM ŏ'-DEEN. Alſo the *Tubeen Kájee*, and two *Mukees*, quoted in *h. l.*

ment;

ment; the taking away any *Moſulmán's* property, without legal cauſe, being expreſsly declared unlawful. Nor is even the temporary ſequeſtration of property ſanctioned by the law, in the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD.* *Tâzeer* by reproach is declared lawful in the *Mŏŏjtuba*, but on one authority only, that of ABOOL EESEER; and under a reſtriction, that it be not ſlanderous†. Baniſhment *(Tughreeb)* is permitted, at the diſcretion of the *Kázee*, as has been already noticed in the caſe of whoredom‡. And *Tuſhheer*, or public expoſure (with the face blackened) is expreſsly declared to be the puniſhment inflicted by ÔMUR upon a falſe witneſs, in addition to forty ſtripes; though ABOO HUNEEFAH, and his two diſciples, differ in opinion, as to whether this ſhould be conſidered a ſentence of *Tâzeer*, for perſonal correction; or of *Seeáſut*, for exemplary puniſhment§.

In the *Humádeeyah*, the following differences between *Hudd* and *Tâzeer* are cited from the *Niſáb ŏŏl Ihtiſáb*. 1. *Hudd* is fixed and ſpecified; whereas *Tâzeer* is left to the judgment of the *Imám*. 2. *Hudd* is prevented by the exiſtence of any *Shŏŏbhah*, (doubt, or legal defect); but *Tâzeer* is executed notwithſtanding ſuch. 3. *Hudd* is not enforced upon a minor; but *Tâzeer* is, in ſome caſes; viz. in matters

Differences between *Hudd* and *Tâzeer*.

* *Nihâyah* and *Futŏh ŏŏl Kudeer* quoted in the *F Á* The paſſage of ſimilar import, in the Trans. of *Hid.* Vol. II, p. 76, appears to have been introduced, by the authors of the Perſian verſion, from the *Nihâyah*. In the *Buhr-i-ráyik* an opinion is ſtated, that if the magiſtrate, after ſequeſtering the property of the offender, ſee no hope of his amendment, he may order the forfeiture of it. And the *Skurh ŏŏl áſár* is cited in proof that, at the commencement of *Iſlám*, it was cuſtomary to take property in exaction of *Tâzeer*, though the uſage was afterwards diſcontinued. But the author of the *Buhr-i-ráyik* adds, that the doctrine, againſt the legality of *Tâzeer* by a pecuniary exaction, is more authoritative. It appears however to have excluſive reference to *Moſulmáns*, and not to bar the levy of a fine, when conſidered the fitteſt penalty, from offenders of any other perſuaſion.

† *Buhr-i-ráyik*.

‡ Vide p. 290.—And Trans. of *Hid.* Vol. II, p. 17. The author of the *Buhr-i-ráyik* contends however that the proper conſtruction of *Tughreeb* is impriſonment, which is a ſpecies of baniſhment from the world; and not exile from city or country, as underſtood by others.

§ See the argument; and the mode of ſtigmatizing a falſe witneſs by *Tuſhheer*, as preſcribed by SHORÝH, *Kâzee* of *Kooſah*. Trans. of *Hid.* Vol. II, p. 715. 716

of a private nature. The author of the *Buhr-i ráyik*, as an example of the latter, quotes from the *Kŏŏnyah*, that a boy giving abuſe to a learned man, is liable to *Tâzeer*; minority in ſuch caſes being no obſtacle to a juſt correction; but he adds, that for crimes of a public nature, ſuch as whoredom, drunkennneſs, theft, and robbery, minors are equally exempted from *Tâzeer*, as from *Hudd*. He further remarks, that if a convicted offender be under ſentence, at the ſame time, to ſuffer both *Hudd* and *Tâzeer*, the latter ſhould be firſt inflicted, provided it be excluſively due in ſatisfaction for private injury: not as a puniſhment for the ends of public juſtice; in which caſe the ſtated penalty would be firſt for execution.

Specification of offences liable to *Tâzeer*, in the *F. A'alumgeeree.*

THE following offences are ſpecified in the *Futáwá-i-Âálumgeeree*, as ſubject to *Tâzeer*; but are not diſtinguiſhed as belonging to the firſt or ſecond of the four claſſes enumerated; though many of them manifeſtly appertain to the former; and the degree of criminality, with reference to times and circumſtances, as well as to the public detriment, or dangerous tendency, of the offence, and the evil diſpoſition and bad habits of the offender, is the general criterion for determining what crimes are to be ranked in the ſecond claſs:—

Abuſive language.

1. Abuſive language, (*Shutm* or *dăŏſhnám*,) reſpecting which the author of the *Shurh i-vikáyah* has given a general rule; whereby, he ſtates, every caſe may be decided, to this effect. "When words of reproach do not amount to the legal crime of ſlander or whoredom, for which the ſpecific puniſhment of *Hudd* is eſtabliſhed, it muſt be conſidered whether they are liable to *Tâzeer* or not. If they impute a voluntary act, which is forbidden by the law, and alſo commonly judged diſreputable, they incur *Tâzeer*; but not otherwiſe, unleſs the credit of perſons of eminence be affected by them. The condition of a *voluntary* act excludes what is

natural

natural and conſtitutional. Therefore if a perſon call another an aſs, *Tâzeer* is not incurred; as the literal ſenſe cannot be intended, and the metaphorical uſe of the term for a fool, or blockhead, refers to a natural defect. It is the ſame if the appellation of monkey be given, to denote deformity; or of dog, to expreſs a bad diſpoſition. But if theſe terms be applied to a reſpectable perſon, ſuch as a learned man, a deſcendant from ALEE, or one of eminent virtue, *Tâzeer* is due for the injury done to ſuch perſons, by the application of diſreſpectful language to them. It is the reverſe, if the party addreſſed be of low degree, as ſuch language is common among perſons of that deſcription, and is not held of conſequence. The qualification of the act imputed, that it be *unlawful*, excepts voluntary acts which, though not forbidden by the law, are generally eſteemed diſcreditable; as the profeſſion of a barber; and ſuch like profeſſions of low eſtimation; to aſcribe which therefore is not puniſhable by *Tâzeer*, unleſs the party addreſſed be of a rank to ſuffer from the imputation, as already explained. Laſtly, the requiſite, of the act imputed being *diſreputable*, exempts from *Tâzeer* the allegation of an act which, though forbidden by the law, is not thought criminal or diſhonorable in ſociety: as the game of draughts, and other games; as well as the office of *Deewân* or financial miniſter, under a tyrant. Moreover, the degree of *Tâzeer* is committed to the judgment of the *Imâm*. Let him therefore conſider the nature of the offence, as ſmall or great; and the condition of the ſpeaker, as well as of the party addreſſed." It is further ſtated in the *Buhr-i rayik*, on the authority of IMÁM MOHUMMUD, that when a perſon is convicted of opprobious language, if he be a gentleman *(Sahib-i morovut)* he ſhould be admoniſhed; if of low degree, he ſhould be impriſoned; or if he have been guilty of groſs or repeated abuſe, both flogged and confined. It is added, that words of reproach are ſubject to *Tâzeer*, when the

ſpeaker

ſpeaker fails in proving them true; but not when the truth of them is eſtabliſhed.*

Forgery.

2. Forgery of deeds or letters, with a fraudulent deſign.

Ridicule of the law, or pretended ſtrictneſs for impoſition.

3. Ridicule of the ordinances of the law, or affected ſanctity and ſcrupulouſneſs, beyond the proviſions of the law, for purpoſes of impoſition.

4. Cutting off the hair of female ſlaves; or the tails of cattle.

5. Compelling another to commit murder or whoredom.†

6. Beſtiality ‡

Sodomy.

7. Sodomy.§

Laſciviouſneſs.

8. Laſciviouſneſs, with a ſtrange woman, whether free or a ſlave.‖

Enticing man's wife, or daughter, for marriage.

9. Enticing away the wife, or daughter, of another; and giving her in marriage to a third perſon.¶

Self pollution.

10. Self pollution.**

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* It is explained that the proof muſt be of ſome ſpecific act; or, according to the *Fut'hool Kudeer*, of notoriety.

† The 2d, 3d, 4th, and 5th inſtances, are quoted in the *F. Á.* from the *Tátárkhánecyah*. They are alſo cited in the *Humádeeyah*.

‡ *Surajeeyah*, and *Jouhur-i-nyyurah* quoted in *F. Á.* In theſe the crime is ſpecified, as between a man and quadruped; or between a woman and an ape. See alſo Trans. of *Hid.* Vol. II p. 27. In the *Shurh-i-wikáyah* and *Bubr-i-rayik* the diſcretion of the *Kázee*, in puniſhing, for determent, the offences of beſtiality and ſodomy, is ſtated to extend to death, by ordering the offender to be burnt, or thrown down from a high place, or by cauſing a wall to fall upon him. Scourging, or confining in a place of bad odour are alſo cited from the *Hóvee* as authorized modes of puniſhment; which caſtration and exciſion are declared not to be.

§ *Futáwá-i-Kázee Khán*; *Tubéen*; and *Hidáyah*, Vol. II, of Trans. p. 26. ABOO YOOSUF and IMÁM MOHUMMUD maintain, that the crime of ſodomy ſhould incur the ſame ſpecific puniſhment as whoredom, and one report of SHÁFI'EE's opinion is to the ſame effect. Another is, that in purſuance of a tradition from the prophet, both parties ſhould be put to death. But ABOO HUNEEFAH denies any reſemblance of the crime to whoredom; and conſiders the tradition cited by SHAFI'EE to relate to *Seeaſut*; when exemplary puniſhment may appear requiſite. See Trans. of *Hid.* in which, however, unnatural copulation with a ſtrange woman only is mentioned. Sodomy with a boy, deſcribed in the original as the *act of Lot*, is omitted. The perpetration of this unnatural crime, with a man's own wife, or female ſlave, is not ſpecified in the *Hidayah*, but in the *Tubéen* it is, and declared liable to *Tázeer*.

‖ *Fut Kázee Khán* and *Hidáyah*, Vol. II, of Trans. p. 26.

¶ *Futáwa-i-Kóobra*. IMAM MOHUMMUD declared, on this caſe, that he would keep the ſeducer in confinement for life; or till he ſhould reſtore the woman enticed away by him.

** *Siráj-i-wuhhaj*, quoted in the *F. Á.*

11. Being

11. Being preſent at an aſſembly of wine drinkers, or of perſons met to drink any thing reſembling wine; though the perſon ſo preſent have not himſelf drank any prohibited liquor.

Being at an aſſembly of wine drinkers.

12. A Moſulman ſelling wine, or taking intereſt.*

Selling wine, or taking intereſt.

13. A man cauſing his minor ſon to drink wine.†

Cauſing an infant to drink wine.

14. A fixed reſident knowingly breaking the faſt of *Rumzán*.‡

Breaking faſt of *Rumzán*.

15. Giving a ſlap on the face, or ſtriking off a Moſulman's turband in the bazar.§

Slapping the face, or ſtriking off a turband.

16. Giving a blow with a ſtick, or other weapon, not dangerous to life.‖

Giving a blow with a ſtick or other weapon.

IT is further ſtated in the *Futáwá* of KÁZEE KHÁN, that perſons againſt whom an imputation lies, of murdering, robbing, or aſſaulting people, may be kept in perpetual impriſonment, unleſs they evince contrition. But in qualification of this principle, the author of the *Buhr-i-ráyik* obſerves, that the imputation, to warrant impriſonment, ſhould be ſupported by, at leaſt, the teſtimony of one credible witneſs; or of two witneſſes, whoſe credit may not have been aſcertained. In the *Tátárkhánecyah* it is ſtated, that diſturbers of the peace, and perſons who excite terror by their attempts againſt life, or property, may be confined till they repent. And in the *Humádeeyah*, that perſons who give intoxicating or ſtupifying drugs, for the purpoſe of theft, are liable to ſevere correction and impriſon-

Other caſes in which *Tázeer* may be inflicted.

* The 11th and 12th Examples are both cited in the *F. Á.* from the *Nuhr-i-Fáyik*. But in the caſe of intereſt, it muſt be underſtood, according to the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD, that the borrower is not an hoſtile infidel, in a foreign land. See Trans. of *Hid.* Vol. II, page 501. Public ſinging and mourning are added as incurring *Tázeer*, from the *Nuhr-i-fáyik*, by KÁZEE NUJM-OO'DEEN.

† *Tátárkhánecyah*, quoted in the *F. Á.*

‡ Ditto. It is added that the offender may be impriſoned, after chaſtiſement, if there be reaſon to ſuppoſe he will again break the faſt.

§ Ditto.

‖ *Buhr-i-ráyik* and *Nuhr-i-fáyik*, quoted in the *F. Á.* It is added, that if the party receiving the blow, return it, he is alſo liable to *Tázeer*. But this muſt not be conſtrued to prohibit ſtrict ſelf-defence.

ment till they ſhew marks of repentance, and make compenſation for the property ſtolen by them. In the work laſt mentioned it is alſo declared, on the authority of Aboo Yoosuf, that the perſons above deſcribed may be dealt with, as the *Imam* ſhall judge proper; and that a ſtrangler, confeſſing his crime, or detected with the uſual implements of ſtrangling, and ſtolen property, may be ſentenced by the *Imám* to be beheaded and crucified. Likewiſe, that ſorcerers, proved to have done ſerious injury by their ſorcery, may be put to death, or impriſoned, according to the circumſtances of the caſe. And an inſtance is quoted from the *Moheet* to prove that death may be inflicted upon ſtrong preſumption without complete legal proof.*

Crimes, which, on proof, are liable to *Hudd*, or *Kiſás*, whether alſo liable to *Tázeer*.

With reſpect to crimes which, on proof, are ſubject to the ſpecific penalties of *Hudd* and *Kiſás*, a difference of opinion has obtained among the learned, whether they are alſo liable to *Tâzeer*, or not. Thoſe who include ſuch offences in the proviſions for diſcretionary correction and puniſhment, conſider theſe to extend to every unlawful act, which is injurious to the community, or to individuals; whereas thoſe who maintain the oppoſite doctrine reſtrict *Tâzeer* to acts for which no ſpecific penalty is fixed by the law. The former conſtruction is however preferred, and generally admitted; becauſe the right of God, or principle of public juſtice, expreſſed or implied, attaches to every caſe of both *Hudd* and *Kiſás*; and may be exerciſed at diſcretion, by the magiſtrate, if it appear expedient. This, it is argued, is clearly deducible from a paſſage in the *Hidáyah*, which veſts the *Imám*, or *Kázee*, with a diſcretion of adding impriſonment, or baniſhment, to the ſpecific penalty of flagellation in certain caſes of whoredom, as

* In the *Aſhbáh ó Nuzáyir*, ſtrong preſumption (*Akburi-ráye*, or *Ghálib-óo-zun*) on which legal judgments of conviction and condemnation are founded, is defined to be, a preponderating inclination of the mind, producing a conviction, which nearly approaches to certainty.

already

already noticed.* The author of the *Kifáyah* ſtates the ſame principle to be equally applicable in all caſes of *Hudd* and *Kiſás*. *Tâzeer* therefore may be inflicted in all inſtances, where *Kiſás* or *Hudd* cannot be enforced; whether barred by ſome legal impediment; or in caſes of *Kiſás*, by the pardon or compromiſe of the heir of the ſlain, or by ſome of the heirs not attending to claim retaliation.† The following rule, for the guidance of the *Kázee* in adjudging *Tâzeer*, is cited in the *Moheet-i-Boŏrhanee*. "Let conſideration be given to the nature of the offence which demands the infliction of *Tázeer*. If it be within the proviſions of *Hudd*, but excepted from the enforcement of them, in the particular caſe, by ſome ſpecial circumſtance, *Tâzeer* by ſtripes (ſuppoſing this mode of correction to be applicable) ſhould be inflicted to the utmoſt limit, (viz. thirty-nine.) For example, if a perſon call the female ſlave, or *oŏm i-wulud* of another, a whore, he ſhould be chaſtiſed to the full extent of corrective *Tâzeer;* becauſe the offence is ſlander, and the offender is exempted from the ſtated puniſhment of *Hudd*, merely by the circumſtance of the party ſlandered not being *Mohſin*‡. But if the offence be not ſubject to *Hudd*, as the calling another a ſloven or libertine, the degree of flagellation, or other ſpecies of *Tâzeer*, is left to the diſcretion of the *Imâm*." The *Buhr-i-ráyik* alſo ſpecifies three caſes, in which *Tâzeer*, by ſtripes, is to be inflicted to the full extent. Firſt. For acts of laſciviouſneſs with a ſtrange woman, not amounting to the actual crime of whoredom. Secondly. When a thief is ſeized, after collecting property, but previouſly to removing it from the place of cuſtody. Thirdly. For expreſſions which fall within the penalty of *Hudd* for ſlander; but are ſpecially excepted from it by the condition of the perſon ſlandered; as when whoredom is imputed to a *Zimmee* or ſlave.

Rule cited in the *Moheet-i-Boorhánee*.

Three caſes, in which *Tâzeer*, by ſtripes, is to be inflicted to the full extent.

* In Page 290, preceding; and in Trans. of *Hid.* Vol. II. p 17.

† Treatiſe on *Tâzeer*, written by KÂZEE NUJM-OŎD-DEEN.

‡ See the qualifications of *Ihſán* in preceding page 296.

THE

Foregoing cases and rule, not applicable to exemplary punishment.

THE foregoing cases and rule do not apply to exemplary punishment for the ends of public justice, when a flagrant offender, convicted either on legal evidence or on strong grounds of presumption, may appear to merit a more adequate punishment than what he is subject to, under the ordinary provisions of the law. But except in cases of a heinous and special nature, which, in the judgment of the sovereign, or his delegate, may call for a severe example, the *Kázee* is restrained, by the tradition before noticed, from inflicting discretionary punishment, equal to the specific penalties; and although in cases of *Secáſut* there is no limitation to the exercise of a sound discretion, according to times and circumstances, the power of enhancing the specific penalties of the law, or of adjudging them without the legal proof required for the enforcement of them, or when they are not legally incurred under exceptions to the general rules of *Hudd* and *Kisás*, is to be exercised occasionally only, as public exigency may call for it; not constantly, and in the ordinary course of justice. This is stated and enlarged upon by MOULAVEE MOHUMMUD RÁSHID, at the conclusion of his dissertation on *Tâzeer*, in the following terms:—

How far the *Kázee* is restricted from inflicting discretionary punishment, equal to the specific penalties, defined by the law.

And in what cases the power of adjudging *Secáſut* at discretion is to be exercised.

Illustration from MOULAVEE MOHUMMUD RASHID'S Treatise on *Tazeer*.

"FROM the whole of the cases stated in this treatise, it is deducible that *Tâzeer*, with respect to the degrees of offences, is of four kinds. 1. For an offence subject to *Hudd*, but, though established by legal proof, exempted by some intervenient circumstance from infliction of the prescribed penalty. As when a slanderous expression is used to a slave; or when a minor, or a relation to the person robbed, steals property sufficient to incur the penalty of theft. 2. For an offence liable to *Hudd*, but not legally proved as required for a sentence of the fixed penalty; though established by sufficient grounds of presumption to warrant a judgment of *Tâzeer*; as when testimony be given by two witnesses of uncertain credit, or one credible witness, to a charge of robbery. 3.

For

For an offence not ſubject to *Hudd*, nor liable to the extremity of *Tâzeer* by ſcourging, as when a perſon calls another a ſloven. 4. For an offence not ſubject to *Hudd*, but liable to the full extent of corrective *Tâzeer*, or to exemplary puniſhment equalling, or exceeding, the penalties of *Hudd*: as ſodomy; and repeated flagitiouſneſs, to the public detriment. In the three firſt caſes, it is not legal to inflict *Tâzeer* to the extent of *Hudd*: as, otherwiſe, in the firſt and ſecond, *Hudd* would be inflicted, when it is not legally due; and the tradition, forbidding ſuch aggravation, would thereby be diſobeyed. Moreover, in the third caſe, the puniſhment would exceed the crime. A further threefold diviſion of *Tâzeer* may be made, with regard to the caſes ſubject to it. 1. For trivial inſtances. 2. For ſuch as are liable to the proviſions of *Hudd*. 3. For heinous caſes, in which exemplary puniſhment may be inflicted, extending to death. In giving judgment upon charges of the firſt deſcription, the *Kázee* ought not to inflict *Tâzeer*, equal to the full extent of the limited number of ſtripes, viz. thirty-nine. In thoſe of the ſecond claſs, he ſhould not paſs ſentence for the ſtated penalties of *Hudd*. But with reſpect to the third deſcription, correſponding with the fourth claſs in the firſt diviſion, he may act to the beſt of his judgment. In caſes of *Kiſás*, however, if retaliation be prevented by the forgiveneſs, or compromiſe, of the heirs of the ſlain, or by any other cauſe affecting the ſentence, after legal proof; let him not inflict *Tâzeer*, which is the right of God, equal to *Kiſas*, which is the right of the individual, and outweighs the former in the inſtances ſubject to retaliation. Diſcretionary correction, upon ſtrong preſumption of guilt, is indeed left to the judgment of the *Kázee*, in all the inſtances ſpecified; but, excepting thoſe mentioned in the final claſs of each diviſion, wherein exemplary puniſhment, extending to death, is ſanctioned, it is not meant that the *Kázee* ſhould, at his diſcretion, adjudge *Tâzeer* equal to the fixed penalties of *Hudd*. Nor, when a criminal, within the two claſſes referred to,

is, in the juſt exerciſe of the *Kázee's* diſcretionary power, ſentenced to ſuffer death, for the ſake of example to others, ſhould it be a ſentence of *Hudd.* For inſtance, a perſon convicted of ſodomy ſhould not ſuffer lapidation, which is the ſtated puniſhment for whoredom: nor ſhould a man, puniſhable for general miſconduct, ſuffer amputation, which is the penalty for particular offences. If any one contend that the well known tradition, "Whoever inflicts *Hudd*, where *Hudd* is not due, is an oppreſſor," applies to trivial offences only, not within the proviſions of *Hudd*, as might be inferred from the literal ſenſe of the words; I anſwer, that the evident meaning of the tradition is more comprehenſive, and includes, beſides offences not ſubject to the penalties of *Hudd*, caſes in which thoſe penalties cannot be legally adjudged, on account of ſome circumſtance of prevention. The *Tâzeer* of offences not puniſhable by *Hudd* is therefore of three kinds. Firſt. For trivial offences, which, though eſtabliſhed by legal proof, are not ſubject to any ſpecific penalty. Secondly. For offences ſubject to *Hudd*, but, though legally proved, excepted by ſome incidental circumſtance, from a judgment for the ſtated penalty. Thirdly. For offences liable to *Hudd* on legal proof; but the evidence of which is defective. The whole of theſe deſcriptions of *Tâzeer* are within the reſtriction of the tradition cited. From the definition given of *Seeáſut*, or examplary puniſhment for the protection of the community, it is manifeſtly intended to be occaſionally inflicted by the *Imam*, when it may appear expedient: not to be conſtantly adjudged. This is inferrible from the ſpecial nature of *Seeáſut*, as applicable to particular caſes; and not being founded on any expreſs authority from the law giver, to enforce it, at all times, without neceſſity, would be objectionable."

Tranſlation of two *Futwás* given by the law officers of the *Nizamut Adalut.*

In verification of what has been ſtated in this ſummary of the Mohummudan criminal law, it may not be improper to conclude it with the following tranſlation of two *Futwás* delivered,

livered, in the years 1794 and 1799, by the *Kázee ööl Köözát*, and other law officers of the court of *Nizámut Âdalut*, in anſwer to queſtions from that court, relative to the proviſions of the law of *Iſlám* for *Tâzeer*; and puniſhment in caſes of *Shööbhah*.

" *Tázeerát*, or the penalties of *Tâzeer*, which are leſs than thoſe of *Hudd*, and the extent of which is not defined by the law, but left to the judgment of the *Kázee* and ſovereign, are of two kinds: one of a private nature, being in ſatisfaction of individual rights; the other public, and conſidered to be the right of God, for the protection of his creatures. That which attaches to individual right may be excuſed by the perſon to whom the right appertains. That which is the right of God is enforcable by the ſovereign and his delegates. But if the ſovereign know that the offender has repented of his crime previouſly to the infliction of *Tâzeer*, he is authorized to remit it. In caſes of a public nature the charge of a proſecutor is not eſſential; and the perſon preferring a charge may be admitted as a witneſs, with another, to prove it. *Tâzeer* is incurred by any unlawful and injurious act; or, more ſtrictly, by any forbidden action, for which no determinate legal penalty is due. In the retribution for illegal homicide, although individual right is predominant, yet the right of God likewiſe attaches, for the preſervation of the lives of mankind. What is written in law-books, that *Kiſás*, or retaliation, is a private right, means only that the exaction of blood for blood, or limb for limb, under the legal proviſions of *Kiſás*, may be claimed as the right of the parties declared entitled thereto. But when *Kiſás* is prevented by any circumſtance of exemption, if the magiſtrate, for the time being, judge it expedient, he may enforce the public right, by inflicting *Tâzeer*, leſs than the ſpecific penalty fixed by the law. This is clearly ſtated in the *Buhr-i-rayik* and other books of authority*. If, therefore

Futwa delivered in 1794.

* A quotation from the *Buhr-i-rayik*, which has been already cited, is here introduced.

It

fore, retaliation of death cannot be adjudged againſt a murderer, from the want of two credible witneſſes, to eſtabliſh a legal conviction; but a preſumption of his guilt ariſes from the teſtimony of one credible witneſs, or of too witneſſes of uncertain credit, he may be legally ſubjected to *Tâzeer* of impriſonment. It is further ſtated in the *Futáwá-i-Âálumgeeree*, that if a maſter kill his ſlave, the magiſtrate may inflict *Tâzeer* upon him: whence it appears, that the murderer being exempt from a ſentence of *Kiſás* or *Diyut*, from his being the maſter of the ſlain, is ſubject to diſcretionary puniſhment."

Futáwá delivered in 1799.

"THE legal penalties of *Hóódood* and *Kiſás* are barred from adjudication by a ſlight doubt of the crime having been committed; as well as by any circumſtance of exception from the general rules, ſuch as the relationſhip between a father and ſon, when the former murders the latter; or one of a band of robbers being a minor or lunatic. But the diſcretionary puniſhment of *Tâzeer* may be inflicted, if the magiſtrate judge it proper, notwithſtanding the exiſtence of a legal defect in the caſe. There are three degrees of imperfect evidence. The firſt produces *Shuk*, or uncertainty whether the charge be true or falſe. The ſecond eſtabliſhes *Zun*, or preſumption that the accuſation is true. The third excites *Wuhm*, or doubt againſt the truth and probability of the fact alleged.* The degree of *Zun* is admitted to be a ground of legal conviction and ſentence, provided the mind receives a ſtrong impreſſion and aſſurance from it; in which caſe it is denominated *Akbur-i-râ,e* and *Zun-i-ghálib*. This degree of violent preſumption amounts nearly to certainty; and is fully deſcribed, as ſuch, in the *Aſhbáhó Nuzáyir*. The ſum therefore of what

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It implies only that a perſon againſt whom there may be a preſumptive imputation of murder, robbery, or aſſault, though inſufficient for his legal conviction and puniſhment, may be kept in confinement, till he evince repentance.

* This is the order of the original: though, according to the degrees of evidence ſtated, or the gradations of doubt, uncertainty, and belief, ariſing therefrom, that of *Wuhm* ſhould rather have commenced, than concluded, the ſeries.

has

has been mentioned upon imperfect evidence, is, that a penal ſentence may be founded upon it, when, in the judgment of the magiſtrate, it affords ſtrong ground of preſumption that the crime charged has been committed by the party accuſed. In the *Buhr-i-ráyik* it is related, from the juriſt ABOO BUKR AÂMUSH, that when a perſon accuſed of theft denies the charge, the magiſtrate may act to the beſt of his judgment upon the caſe. If he be impreſſed with a ſtrong conviction that the priſoner has committed the theft; and has the ſtolen property in his poſſeſſion; he may inflict diſcretionary puniſhment. In the *Moheet* it is declared that the ſhedding of blood upon violent preſumption is authorized. And a ſimilar declaration is contained in the *Buhr-i-rayik*, that it is held lawful to take away life upon ſtrong preſumptive proof. Thus if a man enter the houſe of another with a drawn ſword, and the owner of the houſe entertain a firm belief that the other is come to kill him, he may put the ſtranger to death. Strong preſumption is ſometimes produced by the circumſtances of the caſe, without the teſtimony of witneſſes. It is accordingly noticed by the author of the *Buhr-i-ráyik*, that in like manner as a charge is proved by witneſſes, or by the confeſſion of the accuſed; ſo it is alſo eſtabliſhed by convincing circumſtances. Thus if a man come out of a houſe with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the houſe find a perſon whoſe throat has been recently cut; the blood dropping from it; and there be no other man in the houſe; theſe circumſtances warrant a ſtrong preſumption that the man deſcribed is the murderer. A mere poſſibility of the perſon in queſtion having cut his own throat, or that another may have cut his throat and eſcaped over the wall, is too remote from probability to be relied upon. Strong preſumption is likewiſe, at times, found in the teſtimony of witneſſes, not amounting to legal proof; in which caſe *Tâzeer* may be inflicted, though *Hudd* and *Kiſás* are prevented. Thus KÁZEE KHÁN ſays—" An imputed murderer,

robber, or aſſailant, may be impriſoned, till he ſhew contrition. Upon which the author of the *Buhr-i-ráyik* obſerves, that the imputation (*Ittiham*) ſhould reſt upon the evidence, either of two witneſſes of unaſcertained credit, or of one credible witneſs. Upon ſuch evidence therefore, though legally defective, if it produce a violent preſumption that the accuſed is guilty of the crime alleged againſt him, *Tâzeer* by impriſonment may be adjudged. But, on the contrary, if only a ſingle witneſs of uncertain credit, or a known reprobate, have given teſtimony, the magiſtrate is not authorized to impriſon the accuſed upon evidence of ſo doubtful a nature."

Supplementary obſervation on the ſpecial proviſions of *Tazeer* for *Bughâwut*, or rebellion.

It has been obſerved, in the note to a preceding page,* that the proviſions of the Mohummudan law concerning rebels are more properly applicable to religious inſurgents; being intended for *Moſulmans*, who riſe, in arms and force, againſt their rightful *Imám*, of the ſame perſuaſion, under ſome plea of a legal objection to his authority. The law reſpecting ſuch is fully ſtated in the *Hidáyah*,† and the authors of the Perſian verſion of that work have introduced the chapter reſpecting *Bágheeán*, or rebels, with a diſcrimination (taken from the *Futh-ŏŏl-kudeer*, and other authorities) of the ſeveral deſcriptions of perſons who reſiſt the authority of the rightful *Imám*,‡ as well as with a definition of the *Imám* ſo entitled; viz. a perſon

* Page 248.

† See Trans Vol. II, page 247. It is declared incumbent on the *Imám* to endeavour to recal rebels to their allegiance, and ſhew them what is right, in ſuch manner that the miſunderſtanding which occaſioned their defection may be removed; becauſe Âlee thus conducted himſelf towards the people of *Heerá*, who rebelled. When levying troops, or in actual force and inſurrection, they may be oppoſed; and if taken priſoners, may be confined till they repent; but the whole of the proviſions againſt *Bughâwut*, or rebellion, view it rather as a religious, than a civil offence; and aim at prevention, or ſuppreſſion, of the actual inſurrection only; without providing, by exemplary puniſhment, againſt the recurrence of ſimilar attempts.

‡ Four deſcriptions are ſpecified, viz.—I. Thoſe who withdraw their obedience from the *Imám*, without any plea of right, whether they are in force or not; and who rob and murder *Moſulmans*; and put travellers in fear. Theſe are called *Kŏŏta ŏŏl turreek*, or high-way robbers; the law reſpecting whom has been already ſtated. II. Thoſe who, without force, rob and murder

perſon in whom all the conditions of *Imámut* are united; ſuch as *Iſlám*, freedom, ſanity of intellect, and maturity of age; who has been elected by a tribe of *Moſulmans*, aſſenting to his holding the office; who deſires to advance the faith of *Iſlám*, and to ſtrengthen the *Moſulman* community; under whom *Moſulmans* enjoy ſecurity of perſon and property, as well as protection of their women; who levies the eſtabliſhed tithe and tribute according to law; who, out of the public treaſury, pays what is due to learned men, preachers, judges, and expounders of the law, lecturers and teachers, reciters of the Korán, and others; and who, in every reſpect, maintains the rights of *Moſulmans*. It is added that "whoever does not anſwer this deſcription is not a *rightful Imám*; wherefore it is not incumbent to ſupport him; but, on the contrary, it is a duty to oppoſe him; and make war upon him, till he adopt a right courſe, or be ſlain."* Were the definition thus given of an *Imám*

murder *Moſulmans*, and put travellers in fear; but act on ſome pretext of juſtification. Theſe alſo are ſubject to the ſame legal penalties, as the robbers abovementioned. III. Thoſe who aſſemble in a large body, and poſſeſſing the means of open reſiſtance, withdraw from their obedience to the *Imám*, on a plea which induces them to believe his title to the office invalid, and to juſtify war againſt him, whether ſuch plea be founded on his tyranny or infidelity. Theſe are termed *Khárijees*. They hold it lawful to kill *Moſulmans*, ſeize their property, and enſlave their women. They likewiſe queſtion the faith of the companions of the Prophet. The law concerning them, according to the unanimous opinion of Lawyers and Traditioniſts, is the ſame as the law againſt Rebels. IV. A party of *Moſulmans*, who, in like manner, withdraw themſelves from obedience to the rightful *Imám*; but do not hold it lawful to kill *Moſulmans*, ſeize their property, and enſlave their women, as the *Kharijees* do. Perſons who come within the fourth deſcription are called *Boghat*; plural of *Bághee*, and derived from the word *Bughee*, which, in its original ſenſe, means exaction, injuſtice, and oppoſition to right; and in the language of the law, is particularly applied to denote wrongful and illegal diſobedience to the rightful *Imam*. It is ſo ſtated in the *Futh ool kudeer*."

* This is quoted in the Perſian verſion of the *Hidáyah*, from the *Mádun ool hul áyik*, where it is ſtated to be copied from the *Fuwáyid*. The ſame definition of a *rightful Imam*, and ſanction to oppoſe a perſon who does not come within it, are cited in the *Humádeeyah*, as copied from the *Khuzánut ool dirayah*, on the *Fuwáyid*, or advantages of the *Hidáyah*. It is cited in the ſame work, (the *Humádeeyah*) from the *Kunz-o-dukayik*, that the rebel (*Bághee*) is one who withdraws from obedience to the rightful *Imam*, on a preſumption that he is juſtified in ſo doing, and that the *Imám* has not a juſt title, although the ground of ſuch preſumption is erroneous. If he act without a pretext of this nature, he is ſubject to the ordinance againſt robbers." Alſo from the *Tubkeek*, that "*Boghat* (rebels) are a party of *Moſulmáns*, who riſe againſt a juſt *Imán*, and refuſe ſubmiſſion to the authority of his officers, on a plea of right. If they have not ſuch plea, the law reſpecting them is the ſame as concerning robbers and high-way men."

ba-huk.

ba huk, or legitimate ſovereign, and the right of oppoſing any other in the exerciſe of ſupreme authority, to be ſtrictly maintained within the territorial poſſeſſions of the Eaſt India Company, it would be a queſtion for ſerious conſideration, whether the proviſions of the Mohummudan law, concerning *bughâwut*, or rebellion, ſhould be allowed to have any operation under the Britiſh Government; and the neceſſity of a new law, to ſupply the defects of the Mohummudan law, in the definition and puniſhment of crimes againſt the ſtate, would be obvious.* But in the *Buhr-i-râyik*, it is ſtated that "by an *Imâm*, is intended the *Sooltân*, or his *deputy*, (*Nâyib*;) and, in the *Futâwâ* of KÁZEE KHÁN it is copied from the *Siyur*, as the opinion of the learned, that a *Sooltân* derives his authority from two ſources; one, election, namely the choice of a number of reſpectable *Moſulmans*; the other, exerciſe of power over his ſubjects, ſo as to hold them in awe and fear of his government; without which, election is not ſufficient to eſtabliſh ſovereignty." It has been already obſerved that the Britiſh

* The expediency of a regulation for the purpoſe mentioned was ſuggeſted to the Governor General in Council, in the year 1801, by the *Futwás* of the law officers, upon the trials held in the preceding year, of the NUWÁB SHUMS ŏŏ' DOULAH, and MEERZA JÁN TUPISH. The former was convicted of "attempts to enter into league with the Sovereigns of other countries, for the purpoſe of ſubverting the Britiſh Government in Bengal; of endeavouring to connect himſelf with the Zemindars of Bahar, with a deſign of exciting an internal commotion; and of keeping up a treaſonable correſpondence." The latter was convicted of the charge of treaſon preferred againſt him, "In being joined in the Counſels of SHUMS ŏŏ' DOULAH; in inſtigating the ſending petitions and letters to SOOLTAN ZUMÁN SHÁH and his miniſters of ſtate; in repreſenting as a great advantage, to SHUMS ŏŏ' DOULAH, the colluſion of the Zemindars of Soobah *Azeemâbad*, on the ſtrength of a *Mokhtárnámah* (written power) from them, which was a mere forgery, and without foundation." Yet in both caſes the priſoners were declared by the *Futwás* of the law officers, of the ſpecial court who tried them, and of the *Nizámut Ádálut*, liable only to "impriſonment, until they ſhould ſhew ſigns of repentance, to the ſatisfaction of the ruling power:" and the ſentence accordingly paſſed upon each of them by the court of *Nizámut Ádálut* was "to be impriſoned until the Governor General in Council ſhall be ſatisfied with the ſincerity of his repentance." Upon the expoſition of the Mohummudan law which governed this ſentence, the Governor General in Council (in a letter to the *Nizámut Ádálut*, dated the 9th July 1801,) obſerved, that "the principle, on which this interpretation of the law is founded, appears to be, that the invaſion of foreign powers, whom the criminals had ſolicited to attack the Britiſh poſſeſſions, and the plans of the ſame criminals for exciting internal inſurrection in thoſe poſſeſſions, had not been actually carried into effect. Under the native adminiſtration, this defect in the law would probably have

Britiſh Dominions in India are conſidered to form part of a *Moſulman* Empire, from the nominal acknowledgment of the King of *Dehly*, in whoſe name the coin is ſtruck, as well as from the adminiſtration of *Moſulman* law and the appointment of *Kăzees* in execution of it. On theſe accounts, and perhaps, ſince the happy termination of the late *Marhatta* war, on the ſubſtantial ground of the protection afforded by the Britiſh arms to the unfortunate repreſentative of the Houſe of TYMOOR, the territory of the Eaſt India Company is conſidered to be *Dár-ŏŏl Iſlám*, and the Mohummudan law officers, under that conſideration, have, in ſeveral *Futwás*, upon trials for treaſon and inſurrection againſt the eſtabliſhed government, held the proviſions for *Bughâwut* to be applicable. They have indeed rather erred, in ſtraining the application of them to caſes for which they were not intended; and as they do not authorize more than impriſonment, except during actual reſiſtance, or for the purpoſe of quelling an open rebellion, (when priſoners and fugitives may be put to death, if it appear neceſſary) the convicts have been declared liable to leſs puniſhment, under the ſpecial rules of *Tăzeer* for *Bughâwut*, than might have been inflicted, at the diſcretion of the ruling power, and its judiciary delegates, on the general principles of *Seeâſut*.*

It

have been applied by the exerciſe of that arbitrary power uniformly aſſumed in ſuch caſes by the Mahomedan Government. But as the Britiſh Government has wiſely and honorably precluded itſelf from the exerciſe of ſuch power, and has bound itſelf to adminiſter juſtice according to the Mahomedan Law, until that Law ſhall be expreſsly altered, it is evident that the Britiſh Power in India muſt be continually expoſed to the moſt ſerious danger, unleſs this obvious defect of the Mahomedan Law, with regard to the puniſhment of crimes committed againſt the ſtate, be corrected." His Excellency in Council accordingly deſired, "that the Court would be pleaſed to prepare for his conſideration a draught of a Regulation, framed with a view to the object aboveſtated; conforming as far as local circumſtances might admit, to the principles of the Engliſh Law, with regard to the crime of Treaſon, both in the definition of the crime, and in the puniſhment to be inflicted on perſons who ſhall be convicted of it." The draught of "a Regulation to ſupply the defects of the Mahomedan Law, in the definition and puniſhment of crimes againſt the ſtate," was, in purſuance of the above, ſubmitted by the Court of *Nizámut Âdâlut* to the Governor General in Council, on the 12th October 1803; and is ſtill under the conſideration of Government.

* The caſes of SHUMS-ŏŏ-DOULAH and MEERZA JÁN TUPISH have been mentioned in a former note. The perſons who were brought to trial, for having been concerned with VIZEER ÂLEE,

It will be ſufficient to add, in this place, that the law of *Bughâwut*, being intended for *Moſulman* inſurgents, is not applicable to *Zimmees*, or infidel ſubjects, unleſs they act in ſubordination to a *Moſulman* rebel, as his ſoldiers, or co-adjutors. This is expreſsly ſtated in the *Fuṯh-ŏol-kudeer*, as follows. "If a party of *Zimmees* ſeize a place, and prepare for war, they are enemies (*Ahl-i-hurb*) not rebels. But if rebels (*Ahl-i-bughee*) apply for aſſiſtance to *Zimmees*, and the latter conſequently aid the former in war, the allegiance of the infidel ſubjects is not deſtroyed thereby: in like manner as the junction of a party of rebels (*Moſulmans*) to ſupport *Zimmees* in battle, is not deſtructive of their faith: and they are ſubject only to the puniſhment of rebellion. If however a *Zimmee* ſubject ſerve an army of hoſtile infidels as a ſpy, he is liable to be put to death; as by ſuch ſervice he is joined with them in actual hoſtility."

Âlee, in his conſpiracy againſt the Government, which took place at *Benares* in January 1799, being alſo charged as accomplices with him in the murder of Mr. Cherry, and in other murders and acts of violence, Meerza Beg, and others, convicted of having accompanied Vizeer Âlee, in arms, to Mr Cherry's houſe, on the day of the maſſacre, were declared "liable to *Tázeer*, at the diſcretion of the ruler of the country;" and Meerza Beg, who appeared to have taken an active part in the maſſacre, was ſentenced by the *Nizámut Ádálut*, on the 5th Auguſt 1799, to ſuffer death. Báboo Jugut Sing'h, convicted of "having been concerned in Vizeer Âlee's conſpiracy againſt the Government, and of "writing letters and ſending meſſages to Jugunáth Sing'h (an outlawed rebel) for the "purpoſe of aſſembling troops," being declared by the *Futwá* of the law officers "liable to ſevere puniſhment at the diſcretion of the ruler of the country," was alſo conſidered by the *Nizámut Ádálut* deſerving of death; but being a Brahmin, and conſequently exempted from capital puniſhment, by Section XXIII, Regulation XVI, 1795, for the province of Benares, whereby it is enacted that "no Brahmin ſhall be puniſhed with death; in caſes in which a Brahmin ſhall be declared by the law liable to ſuffer death, he ſhall, in lieu of ſuch puniſhment, be ſubject to be ſentenced by the *Nizámut Ádálut* to tranſportation;" that Court, on the 23d July 1799, ſentenced the Priſoner to be tranſported for life.

SECTION II.

MODIFICATIONS OF, AND ADDITIONS TO, THE MOHUMMUDAN CRIMINAL LAW, ENACTED BY THE REGULATIONS OF THE BRITISH GOVERNMENT.

Reflections upon the ſtatement of the Mohummudan criminal law, contained in the preceding ſection.

TO ſome, who peruſe the foregoing ſtatement of the Mohummudan Criminal law, its proviſions may appear ſo ill calculated for the ends of public juſtice, as to ſuggeſt the expediency of their total abrogation; and of ſubſtituting for them a new code of laws, founded on thoſe of England, or of ſome other country, where the principles of legiſlation and good government are better known, both in theory and practice, than they could be to the people who, nearly twelve centuries ago, became ſubject to the arms, religion, and policy of MOHUMMUD; or to thoſe who have been ſince forced to acknowledge the arbitrary ſway of his ſucceſſors. Such, undoubtedly, would have been the opinion of a revolutionary French Government, had it been the fate of the Natives of India to receive a ſyſtem of internal adminiſtration from France in the year 1793; the year in which LOUIS the XVI. was beheaded, and the ſtate declared a republic. But ſuch were not the ſentiments of thoſe who framed the Laws and Regulations compriſed in the Bengal Code of 1793. It is the remark of

And upon the ſentiments and principles which appear to have influenced the Britiſh Government in its amendments

of the Mohammedan law.

an eminent writer upon legiſlation;*—That "a true politician always conſiders how he ſhall make the moſt of the exiſting materials of his country. A diſpoſition to preſerve, and an ability to improve, taken together, would," he ſays, "be my ſtandard of a ſtateſman." And, in another place, after pointing out the fatal conſequences to be expected from the arbitrary proceedings of the French national aſſembly, who, to evade difficulties in remedying the errors and defects of old eſtabliſhments, commenced their ſchemes of reform with abolition and deſtruction, he adds the following juſt obſervations; which are here quoted at length, as appearing appoſite to the introduction of the ſyſtem of law and internal government, now ſo happily eſtabliſhed within the territory of the Eaſt India Company, ſubject to the immediate authority of the Government of Fort William; and gradually extending itſelf to the whole of the Company's poſſeſſions, under the Preſidencies of Fort St. George and Bombay. "At once to preſerve and to reform is quite another thing. When the uſeful parts of an old eſtabliſhment are kept, and what is ſuperadded is to be fitted to what is retained, a vigorous mind, ſteady perſevering attention, various powers of compariſon and combination, and the reſources of an underſtanding fruitful in expedients, are to be exerciſed; they are to be exerciſed in a continued conflict with the combined force of oppoſite vices; with the obſtinacy that rejects all improvement, and the levity that is fatigued and diſguſted with every thing of which it is in poſſeſſion. But you may object.—"A pro-"ceſs of this kind is ſlow. It is not fit for an aſſembly, which "glories in performing in a few months the works of ages. "Such a mode of reforming, poſſibly, might take up many "years." Without queſtion it might, and it ought. It is one of the excellencies of a method in which time is amongſt the aſſiſtants, that its operation is ſlow, and in

As well as generally in the introduction of the ſyſtem of law, and internal adminiſtration, now eſtabliſhed.

Quotation from Mr. Burke's reflections on the French Revolution.

* Mr. Burke, in his reflections on the French Revolution.

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ſome caſes almoſt imperceptible. If circumſpection and caution are a part of wiſdom, when we work only upon inanimate matter; ſurely they become a part of duty too, when the ſubject of our demolition and conſtruction is not brick and timber, but ſentient beings, by the ſudden alteration of whoſe ſtate, condition, and habits, multitudes may be rendered miſerable. But it ſeems as if it were the prevalent opinion in Paris, that an unfeeling heart, and an undoubting confidence, are the ſole qualifications for a perfect legiſlator. Far different are my ideas of that high office. The true lawgiver ought to have an heart full of ſenſibility. He ought to love and reſpect his kind, and to fear himſelf. It may be allowed to his temperament to catch his ultimate object with an intuitive glance; but his movements towards it ought to be deliberate. Political arrangement, as it is a work for ſocial ends, is to be only wrought by ſocial means. There mind muſt conſpire with mind. Time is required to produce that union of minds which alone can produce all the good we aim at. Our patience will atchieve more than our force. If I might venture to appeal to what is ſo much out of faſhion in Paris, I mean to experience, I ſhould tell you, that in my courſe I have known, and, according to my meaſure, have co-operated with, great men; and I have never yet ſeen any plan which has not been mended by the obſervations of thoſe who were much inferior in underſtanding to the perſon who took the lead in the buſineſs. By a ſlow, but well ſuſtained progreſs, the effect of each ſtep is watched; the good or ill ſucceſs of the firſt gives light to us in the ſecond; and ſo, from light to light, we are conducted with ſafety through the whole ſeries. We ſee that the parts of the ſyſtem do not claſh. The evils latent in the moſt promiſing contrivances are provided for as they ariſe. One advantage is as little as poſſible ſacrificed to another. We compenſate, we reconcile, we balance. We are enabled to unite into a conſiſtent whole the various anomalies and contending prin-

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ciples that are found in the minds and affairs of men. From hence arises, not an excellence in simplicity, but one far superior, an excellence in composition. Where the great interests of mankind are concerned, through a long succession of generations, that succession ought to be admitted into some share in the councils which are so deeply to affect them. If justice requires this, the work itself requires the aid of more minds than one age can furnish. It is from this view of things that the best legislators have been often satisfied with the establishment of some sure, solid, and ruling principle in government; a power like that which some of the philosophers have called a plastic nature; and having fixed the principle, they have left it afterwards to its own operation."

How far the views and principles stated appear to have influenced the attempts of the British Government in India, to improve the laws it found in force; especially for the administration of criminal justice.

THE views and principles thus stated appear to have influenced the British Government in India, throughout all its attempts to improve the laws which it found in force at the periods of its territorial acquisitions; particularly its endeavours to render the administration of criminal justice more adequate to the due attainment of the important objects intended by it. Instead of abrogating the Mohummudan criminal law, which, however defective, had been long in force, and was therefore known to the people; the administration of criminal justice was, for some years after the Company's acquisition of the *Deewany* grant, left, as formerly, to the *Nazim*; and the influence only of the Company's Servants was exerted to remedy the deficiencies of the law, or promote the due execution of it, as appeared requisite in the cases that occured.

Judicial Regulations of 1772

By the judicial regulations which were proposed by the Committee of circuit on the 15th August 1772, and adopted by the President and Council on the 21st of that Month, a court of criminal judicature was established in each district, under the denomination of *Phoujdarree Adawlut*, in which a *Kázee* and *Mouftee*, with the assistance of two *Moulavees*, as expounders of the law, were appointed to try persons charged with

with crimes and miſdemeanors; and it was alſo declared to be the duty of the collector of the diſtrict, "to attend to the "proceedings of this court, ſo far as to ſee that all neceſſary "evidences are ſummoned and examined; that due weight is "allowed to their teſtimony; and that the deciſion paſſed is "fair and impartial, according to the proofs exhibited in the "courſe of the trial; and that no cauſes be heard or determin-"ed but in the open court regularly aſſembled." A ſuperior court of criminal juriſdiction was, at the ſame time, eſtabliſhed at Moorſhedabad, (then conſidered the capital,) under the deſignation of *Nizamut Sudder Adawlut*, in which was to preſide a chief officer, having the title of *Daróghah*, on the part of the *Názim*, aſſiſted by the chief *Kázee*, the chief *Mooftee*, and three capable *Moulavees*; whoſe duty it was declared to be, "to reviſe all the proceedings of the *Phoujdarree Adawlut*; and "in capital caſes, by ſignifying their approbation or diſappro-"bation thereof, with their reaſons at large, to prepare the "ſentence for the warrant of the *Názim*." A control over the proceedings of this court, ſimilar to that veſted in the collectors of diſtricts over the *Phoujdarree Adawluts*, was lodged in the chief and council at Moorſhedabad; and the object of ſuch control was ſtated to be "that the Company's adminiſtration, "in character of King's Dewan, may be ſatisfied, that the de-"crees of juſtice, on which both the welfare and ſafety of the "country ſo materially depend, are not injured or perverted "by the effects of partiality or corruption." But the only alteration in, or rather addition to, the proviſions of the Mohummudan criminal law, made by theſe primary regulations of the Britiſh Government, was contained in the 35th Article; to the following effect. "That, whereas the peace of this country hath, for ſome years paſt, been greatly diſturbed by bands of decoits, who not only infeſt the high roads, but often plunder whole villages, burning the houſes, and murdering the inhabitants; and whereas theſe abandoned out-laws have hitherto found means to elude every attempt, which the vi-

Additon to the proviſions of the Mohummudan criminal law, made by thoſe regulations, relative to decoits, or gang-robbers.

gilence of government hath put in force, for detecting and bringing ſuch atrocious criminals to juſtice, by the ſecrecy of their haunts, and the wild ſtate of the diſtricts, which are moſt ſubject to their incurſions; it becomes the indiſpenſible duty of government to try the moſt rigorous means; ſince experience has proved every lenient and ordinary remedy to be ineffectual. That it be therefore reſolved, that every ſuch criminal, on conviction, ſhall be carried to the village to which he belongs; and be there executed, for a terror and example to others; and for the further prevention of ſuch abominable practices, that the village, of which he is an inhabitant, ſhall be fined, according to the enormity of the crime; and each inhabitant according to his ſubſtance; and that the family of the criminal ſhall become the ſlaves of the ſtate; and be diſpoſed of, for the general benefit and convenience of the people, according to the diſcretion of the Government." The grounds upon which the above ſevere rule was ſuggeſted by the committee of circuit, are ſtated in the following extract from their letter to the Preſident and Council, dated 15th Auguſt 1772. "We have judged it neceſſary to add to the regulations, with reſpect to the Courts of Phoujdarry, a propoſal for the ſuppreſſion and extirpation of decoits, which will appear to be dictated by a ſpirit of rigour and violence, very different from the caution and lenity of our other propoſitions; as it in ſome reſpects involves the innocent with the guilty. We wiſh a milder expedient could be ſuggeſted; but we much fear that this evil has acquired a great degree of its ſtrength, from the tendencies and moderation which our Government has exerciſed towards theſe banditti, ſince it has interfered in the internal protection of the provinces. We confeſs that the means which we propoſe can in no wiſe be reconcileable to the ſpirit of our own conſtitution: but until that of Bengal ſhall attain the ſame perfection, no concluſion can be drawn from the Engliſh law, that can be properly applied to the manners or ſtate of this country.

Grounds upon which the rule ſtated was ſuggeſted by the Committee of Circuit.

country. The decoits of Bengal are not, like the robbers in England, individuals driven to ſuch deſperate courſes by ſudden want: they are robbers by profeſſion, and even by birth; they are formed into regular communities, and their families ſubſiſt by the ſpoils which they bring home to them; they are all, therefore, alike, criminal wretches, who have placed themſelves in a ſtate of declared war with our Government, and are therefore wholly excluded from every benefit of its laws. We have many inſtances of their meeting death with the greateſt inſenſibility; it loſes therefore its effect as an example: but when executed in all the forms and terrors of law, in the midſt of the neighbours and relations of the criminal; when theſe are treated as acceſſaries to his guilt, and his family deprived of their liberty, and ſeparated for ever from each other; every paſſion, which before ſerved as an incentive to guilt, now becomes ſubſervient to the purpoſes of ſociety, by turning them from a vocation, in which all they hold dear, beſides life, becomes forfeited by their conviction: at the ſame time, their families, inſtead of being loſt to the community, are made uſeful members of it, by being adopted into thoſe of the more civilized inhabitants. The ideas of ſlavery, borrowed from our American colonies, will make every modification of it appear, in the eyes of our countrymen in England, a horrible evil. But it is far otherwiſe in this country: here ſlaves are treated as the children of the families to which they belong; and often acquire a much happier ſtate, by their ſlavery, than they could have hoped for by the enjoyment of their liberty; ſo that, in effect, the apparent rigour, thus exerciſed on the children of convicted robbers, will be no more than a change of condition, by which they will be no ſufferers; though it will operate as a warning on others; and is the only means, which we can imagine, capable of diſſipating theſe deſperate and abandoned ſocieties, which ſubſiſt on the diſtreſs of the general community."

Remarks upon the ſtated penalties for gang-robbery.

It ſeemed proper to exhibit at length the reaſons which influenced legal proviſions ſo penal as thoſe contained in the 35th Article of the Regulations of 1772; and in juſtification of ſuch part of them as relate to the convicted offender himſelf, it may be remarked, that they are ſtrictly conſiſtent with the Mohummudan law of *Seeiſut*, as explained in the preceding ſection. The fine upon the village, of which the offender is an inhabitant, might alſo be juſtified, if regulated by a due regard to circumſtances; eſpecially to a neglect of means, either of preventing the commiſſion of the offence, or of apprehending the offender. But the diſpoſal of the family of the criminal, to paſs their lives in ſlavery, without proof of their participation in the criminality upon which ſo heavy a ſentence is grounded, cannot be reconciled with juſtice or humanity; and it muſt therefore be ſatisfactory to note, that if this part of the rule was (under the diſcretion veſted in the government) ever enforced; it has long ſince ceaſed to operate.* A reſtriction indeed in the application of the ſtated penalty, to profeſſed robbers, and murderers, appears to have been introduced by Mr. Hastings, in the next year, 1773; and he, at the ſame time, ſubmitted to the conſideration of government, in the form of queries for determination, ſundry points, upon which the Mohummudan law, or the diſpenſation of it by the exiſting courts of judicature, had been found repugnant to the principles, or inadequate to the ends, of

* The Regulations cited are inſerted in the 6th Report of the Committee of Secrecy appointed by the Houſe of Commons in 1773; but may be more conveniently referred to in the Appendix, or 3d Vol. of Mr. E. Colebrooke's *Digeſt of Regulations*, recently publiſhed; in which the Judicial, Revenue, Commercial and other Regulations of the Bengal Government, paſſed antecedently to thoſe of 1793, have been collected under ſeparate heads; and furniſh the moſt uſeful and ready means of aſcertaining what rules were in force, at any period, upon the ſeveral ſubjects to which they relate. In like manner the 1ſt and 2d Vols. of this meritorious public work (in which the Regulations enacted from the commencement of 1793, to the end of 1806, are abſtracted, and digeſted under diſtinct heads, alphabetically arranged) muſt afford to the Company's Civil Servants, in every Department, an eaſy acceſs to the Rules preſcribed for their guidance; and muſt eſſentially promote a general and correct knowledge of the now voluminous Code of Regulations in force.

juſtice.

juſtice. His letter upon this ſubject, dated the 10th July 1773, is ſo explicit; and demonſtrates ſo particular an attention to the principal defects of the Moſulman criminal law, at an early period after the adminiſtration of juſtice, in Bengal, came under the ſuperintendence of the Britiſh Government; that it appears to merit inſertion at length in this place.

Letter from Mr. HASTINGS dated 18th July 1773 propoſing a reſtriction of the penal rule ſtated, of profeſſed robbers, and murderers. And ſubmitting ſeveral points of Mohummudan law found repugnant, or inadequate, to the ends of juſtice.

"THE term decoit, in its common acceptation, is too generally applied to robbers of every denomination; but properly belongs only to robbers on the highway, and eſpecially to ſuch as make it their profeſſion, of whom there are many in the woody parts of the diſtrict of Dacca, and on the frontiers of the province; a race of outlaws who live, from father to ſon, in a ſtate of warfare againſt ſociety; plundering and burning villages and murdering the inhabitants. Theſe were intended by the Board, in the 35th Article of their judicial regulations, which declares that all ſuch offenders ſhall ſuffer death, and their families be condemned to perpetual ſlavery. Severe and unjuſt as this ordinance may ſeem, I am convinced that nothing leſs than the terror of ſuch a puniſhment will be ſufficient to prevail againſt an evil, which has obtained the ſanction and force of hereditary practice, under the almoſt avowed protection both of the zemindars of the country, and the firſt officers of the government. Yet if a careful diſtinction be not made, the raiat, who, impelled by ſtrong neceſſity, in a ſingle inſtance, invades the property of his neighbour, will, with his family, fall a ſacrifice to this law; and be blended in one common fate with the profeſſed decoit, or the murderer. In the foujdarry trials nothing appears but the circumſtances of the robbery for which the priſoner is arraigned. That he is a decoit is taken upon preſumption, and all the world are his enemies. The Moulavies in the provincial courts refuſe to paſs ſentence of death on decoits, unleſs the robbery committed by them has been attended with murder. They reſt their opinion on the expreſs law of the Coran, which is the

infallible guide of their deciſions. The court of Nizamut, under whoſe review the trials paſs, and whoſe province it is to prepare the futwas for the final ſentence and warrant of the Názim, being equally bound to follow the Mahomedan law, confirm the judgment of the provincial court. The Mahomedan law is founded on the moſt lenient principles, and an abhorrence of bloodſhed. This often obliges the ſovereign to interpoſe, and by his mandate to correct the imperfection of the ſentence, to prevent the guilty from eſcaping with impunity, and to ſtrike at the root of ſuch diſorders as the law will not reach. It is worthy of remark, that the inſtances, which are recorded in hiſtory of ſtrict and exemplary juſtice in the princes of that religion, are all of the moſt ſanguinary kind; and inflicted without regard to the law, and generally without any regular proceſs or form of trial. I ſhould be ſorry to recommend an example of ſuch rigour for the practice of our government. I mean only by this ſhort diſcuſſion to ſhow, that it is equally neceſſary and conformable to cuſtom for the ſovereign power to depart in extraordinary caſes from the ſtrict letter of the law, and to recommend the ſame practice in the caſes now before us. I offer it therefore as my opinion, that the puniſhments decreed by this government againſt profeſſed and notorious robbers be literally enforced; and where they differ from the ſentences of the adawlut, that they be ſuperadded to them by an immediate act of government; that every convicted felon, and murderer, not condemned to death by the ſentence of the adawlut, and every criminal who has been already ſentenced either to work during life upon the roads, or to ſuffer perpetual impriſonment, be ſold for ſlaves, or tranſported as ſuch to the Company's eſtabliſhment at Fort Marlbrough; and that this regulation be carried into execution by the immediate orders of the Board, or by an office inſtituted for that purpoſe in virtue of a general order or commiſſion from the Nazim. By theſe means the government will be releaſed

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from a heavy expence in erecting priſons, keeping guards in monthly pay, and in the maintenance of accumulating crouds of priſoners. The ſale of the convicts will raiſe a conſiderable fund, if theſe diſorders continue. If not, the effect will be yet more beneficial. The community will ſuffer no loſs by the want of ſuch troubleſome members, and the puniſhment will operate as an example much more forcible and uſeful than impriſonment, fines, or mutilation. The former, to a people addicted to their eaſe, and who ſee in ſuch a condition only an exemption from the neceſſity of daily labor, loſes much of its terror. Fines fall with unequal weight on the wealthy and on the indigent. They are unfelt by the firſt; they prove equivalent to utter ruin or perpetual impriſonment to the laſt. And mutilation, which is too common a ſentence to the Mahomedan Courts, though it may deter others, yet renders the criminal a burthen of the public, and impoſes on him the neceſſity of perſevering in the crimes which it was meant to repreſs."

Queries ſubmitted by Mr. HASTINGS for the determination of the Council, relative to the proviſions and adminiſtration of the Mohummudan law.

"I BEG leave to ſubjoin the following queries for your determination, as they have occurred to me in the proceedings of the adawlut already referred to. I have annexed my opinion to each.

1ſt. Whether the futwa, or decree of the Nizamut Adawlut, after it ſhall have received the confirmation of the Nazim, ſhall be carried into execution preciſely in the terms of his warrant, or whether this Government ſhall interfere in adding to, or commuting, the puniſhment, in caſes wherein it ſhall appear inadequate to the crime, or ineffectual as a check?"

"ALTHOUGH we profeſs to leave the Nazim the final judge in all criminal caſes, and the officers of his courts to proceed according to their own laws, terms, and opinions, independent of the controul of this Government; yet many caſes may happen in which an invariable obſervance of this rule may prove

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of dangerous conſequence to the power by which the Government of this country is held, and to the peace and ſecurity of the inhabitants. Whenever ſuch caſes happen, the remedy can only be obtained from thoſe in whom the ſovereign power exiſts. It is on theſe that the inhabitants depend for protection, and for the redreſs of all their grievances; and they have a right to the accompliſhment of this expectation, of which no treaties nor caſuiſtical diſtinctions can deprive them. If therefore the powers of the Nizamut cannot anſwer theſe ſalutary purpoſes; or, by an abuſe of them, which is much to be apprehended from the preſent reduced ſtate of the Nazim, and the little intereſt he has in the general welfare of the country, ſhall become hurtful to it; I conceive it to be ſtrictly conformable to juſtice and reaſon, to interpoſe the authority or influence of the Company, who, as Dewan, have an intereſt in the welfare of the country; and as the governing power, have equally a right and obligation to maintain it. I am therefore of opinion, that whenever it ſhall be found neceſſary to ſuperſede the authority of the Nazim, to ſupply the deficiences, or to correct the irregularities, of his courts, it is the duty of this Government to apply ſuch means as in their judgment ſhall beſt promote the due courſe and ends of juſtice; but that this licenſe ought never to be uſed without an abſolute neceſſity, and after the moſt ſolemn deliberation. In many caſes it may not be difficult to obtain the Nabob's warrant for ſuch deviations from the ordinary practice, as may be requiſite; and it were to be wiſhed, that they could be always enforced by his authority; but I ſee ſo many ill conſequences, to which this would be liable, both from his aſſent and from his refuſal, that I am rather inclined to propoſe, that every act of this kind be ſuperadded to his ſentence by our own Government. Although this is my opinion upon the queſtion as it reſpects the rights of juſtice, and the good of the people, I am ſorry to add, that every argument of perſonal conſideration ſtrongly oppoſes it, having but too much reaſon to apprehend, that while the popular

pular current prevails, which over-runs every ſentiment of candor towards the Company and its Agents, it will be dangerous both to our character and fortunes to move a ſtep beyond the plain and beaten line; and that, laudable as our intentions were, we have already done too much. My duty compels me to offer the advice which I have given; and to that I poſtpone every other conſideration."

" 2d. WHETHER the diſtinction which is made by the Mahommedan Law, between murder perpetrated with an inſtrument formed for ſhedding blood, and death cauſed by a deliberate act, but not by the means of an inſtrument formed for ſhedding blood, ſhall be admitted; and whether the fine impoſed on the latter ſhall be allowed as a ſufficient puniſhment?"

" IF the intention of murder be clearly proved, no diſtinction ſhould be made with reſpect to the weapon by which the crime was perpetrated. The murderer ſhould ſuffer death, and the fine be remitted. I am juſtified in this opinion by good authorities, even among the Muſſulmans, although the practice is againſt it. I will venture to appeal to the abſtract of the proceedings which accompanies this for a proof of the inequality and injuſtice of the deciſions founded on this ſtrange diſtinction; beſides the evil tendency which it derives from the little dread an indigent offender feels of a penalty which he knows can never be literally inflicted upon him; and which I fear is frequently the cauſe of murder, as it ſerves to ſcreen the crime of robbery with no additional conſequence to the criminal. I beg leave to quote an inſtance in the proceedings above referred to. A man held the head of a child under water till it was ſuffocated, and made a prize of her clothes and the little ornaments of ſilver which ſhe wore. It was evident that his object was no more than robbery, and murder the means both of perpetrating and concealing it. There is too much cauſe alſo to ſuſpect the extraordinary manner in which

the murder was committed was ſuggeſted by the diſtinction made by the law in queſtion, by which he was liable to no severer retribution than for the ſimple robbery; whereas he would have been ſentenced to ſuffer death, had he killed the deceaſed with a knife or a ſword, although he might have been impelled to it by ſudden paſſion, and not premeditated deſign. Yet for this horrid and deliberate act, he is pronounced guilty of manſlaughter only; and condemned to pay the price of blood, which ſeems invariably fixed at the ſum of rupees 3333 5 4.

" 3d. WHETHER the puniſhment decreed by the 35th article of the judicial regulations, formed by the Board, ſhall be carried into execution without the ſentiments of the Nizamut Adawlut, or the warrant of the Nazim; and in what manner?"

" UPON this queſtion I have already declared my opinion in the affirmative. I would recommend that every caſe, to which this ordinance may be applied, be laid before the Board, and their ſanction obtained for its being carried into execution. I ſubmit it to their conſideration, whether it may not be expedient to appoint ſome office which ſhall have it in ſpecial charge to record ſuch extraordinary proceedings, to prepare them for the judgment of the Board, and to execute their orders upon them.

" 4th. WHETHER the privilege granted by the Mahommedan law to the ſons or neareſt of kin, to pardon the murderers of their parents or kinſmen, ſhall be allowed to continue in practice? or in what manner the government ſhall proceed in caſes of this kind, if it ſhall be judged expedient to make an example of the criminals, in oppoſition to the letter of the law, and the ſentences of the court of adawlut?"

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" This law, though enacted by the higheſt authority which the profeſſors of the Mahommedan faith can acknowledge, appears to be of barbarous conſtruction, and contrary to the firſt principle of civil ſociety, by which the ſtate acquire an intereſt in every member which compoſes it, and a right in his ſecurity. It is a law, which, if rigidly obſerved, would put the life of every parent in the hands of his ſon; and by its effect on weak and timid minds, which is the general character of the natives in Bengal, would afford a kind of pre-aſſurance of impunity in thoſe who were diſpoſed to become obnoxious to it. If the Nazim cannot be influenced to aboliſh totally this ſavage privilege, which we know is not univerſally admitted; or the courts of juſtice to diſuſe it; I am of opinion that the government ſhould interfere, by its own authority, to prevent its taking effect, by cauſing the ſentence to be executed without leaving an option in the children or kinſmen to fruſtrate it by their pardon."

" 5th. Whether the law which enjoins the children, or neareſt of kin to the perſon deceaſed, to execute the ſentence paſſed on the murderers of their parents or kinſmen, on account of its tendency to cauſe ſuch crimes to paſs with impunity, ſhall be permitted to continue, or whether it ſhall not be aboliſhed by a formal act of government?"

" This law, ſuppoſed of the ſame divine original, is yet more barbarous than the former; and in its conſequences more impotent. It would be difficult to put a caſe, in which the abſurdity of it ſhould be more ſtrongly illuſtrated, than in one now before us, of a mother condemned to periſh by the hands of her own children for the murder of her huſband. Their age is not recorded, but by the circumſtances, which appear in the proceedings, they appear to be very young. They have pardoned their mother. They would have deſerved death themſelves, if they had been ſo utterly devoid

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of every feeling of humanity, as to have been able to adminiſter it to her who gave them life. I am of opinion, that the courts of juſtice ſhould be interdicted from paſſing ſo horrid a ſentence, by an edict of the Nazim, if he will be perſuaded to it; by the government, if he refuſes."

"6th. WHETHER fines, inflicted for manſlaughter, ſhall be proportioned to the nature of the crime, as the Mohummudan law ſeems to intend; or both to the nature and degree of the crime, and to the ſubſtance and means of the criminal?"

"IF the fine exceeds the means of the criminal it muſt deprive the ſtate of his ſervice, and prove a heavier puniſhment than the law has decreed him."

"7th. WHETHER the fines ſhall be paid to the Nazim, or taken by the Company as Dewan? or, whether they ſhall not be ſet apart for the maintenance of the courts and officers of juſtice, and for the reſtitution of the loſſes ſuſtained by the inhabitants from decoits or thieves?"

"IT may be dangerous to admit of ſuch a right in the Nazim. It cannot be better or more equitably employed, than for the uſes expreſſed in the concluding terms of the queſtion."

"ALTHOUGH it was incumbent upon me to deliver my own opinion upon the above references, while I requeſted that of the Board, I have offered it with diffidence, and I confeſs with ſome reluctance, knowing the objections to which every kind of innovation is liable, but more eſpecially in the eſtabliſhed laws, or forms of juſtice. But I conceive, that the points which I have offered to your conſideration will be found, in reality, not ſo much to regard the laws in being, as the want of them; a law which defeats its own ends and

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operation being ſcarce better than none. Whatever your determination ſhall be concerning them, I ſhall moſt readily acquieſce in, and ſhall give my heartieſt aſſiſtance to its effectual execution."

Opinion of the other Members of the Government upon the points ſubmitted by Mr. HASTINGS.

ON the 31ſt Auguſt 1773, the other members of the government, having conſidered the letter addreſſed to them by Mr. HASTINGS, recorded their opinion upon it in the following terms. "The Board are fully ſenſible of the juſtneſs and propriety of the Preſident's remarks upon the criminal law of this country: their ſentiments in general coincide with his: and they are equally convinced with him of the abſolute neceſſity that a power ſhould exiſt to control and ſuperintend the ſentences of the Mahometan judges; and where the letter of the law appears clearly repugnant to the principles of good government and common ſenſe, to apply ſuch a remedy as the caſe may require; for without this interpoſition, it is evident, from the inſtances given by the Preſident, that the moſt atrocious criminals might eſcape with impunity, by means of a precaution in the manner of perpetrating the crime; by the privilege enjoyed by individuals of remitting the puniſhment; and by the many nice diſtinctions which the expounders of the Coran have introduced. In order to prevent theſe abuſes, and to provide a remedy for extraordinary evils, the ſovereign power, in every Mahometan ſtate, has reſerved to itſelf the right of interpoſing with its authority; and of iſſuing ſuch mandates as are evidently neceſſary for the benefit of ſociety; and for that perſonal ſecurity which every member of a community is entitled to. In this country it has not only been the cuſtom, but ſeems to be a maxim interwoven in the conſtitution, that every caſe of importance, where the preciſe letter of the law would not reach the root of the evil, ſhould be ſubmitted to the judgment of the *Hakim*, or ruler of the country, by an expreſs reference added to the ſentence. In a point however of ſo de-

licate and important a nature, the Board would wiſh to conſider it with the benefit of the preſence and councils of the Preſident; and be furniſhed with the fulleſt information before they come to any determinate reſolution. They are ſenſible of that difficult ſituation in which they are placed; and would wiſh, with the Preſident, that where a deviation from the ſtrict letter of the law becomes indiſpenſable, it could be enquired into by officers appointed by the Nazim, and enforced by his warrants."

The Nizamut Adawlut which had been eſtabliſhed at Moorſhedabad in 1772, removed to Calcutta in the ſame year, and the Darogah of it placed under the control of the Governor.

THE Preſident was accordingly requeſted to aſcertain the ſentiments of the *Nuwab*, and his officers, upon the ſubject under conſideration; and as, in conſequence of the abolition of the Controlling Council of Revenue at Moorſhedabad, the *Nizamut Adawlut* had, in the preceding year, been removed to the Preſidency, it was propoſed, with a view to prevent the delay experienced, in tranſmitting the *Futwas* of the *Nizamut Adawlut* for the *Nuwab's* warrant, that a perſon on his part ſhould be appointed to reſide in Calcutta, with authority to affix the *Názim's* ſeal to warrants iſſued for the execution of ſentences approved by the law officers of the *Nizamut Adawlut*. This arrangement was accordingly adopted, with the conſent of the *Begum*, on the part of the minor *Nuwáb*; and SUDR-ŏŏL-HUK KHÁN, the *Daróghah* of the *Nizamut Adawlut*, being appointed to the *Neeábut* of this branch of the *Nizámut*, the Preſident of the Council was requeſted "to "ſuperintend him in the exerciſe of his office; as well in "reviſing ſentences of the Adawlut; as in paſſing the war-"rants and affixing the ſeal." This ſuperintendence veſted in the Preſident and Governor a general control over the adminiſtration of criminal juſtice; and it appears from the public records to have been aſſiduouſly and beneficially exerciſed by Mr. HASTINGS, during a period of eighteen months (in the courſe of which, viz. on the 19th April 1774, a new Police Eſtabliſhment, conſiſting of foujdars, tanadars, and pikes

A police eſtabliſhment of foujdars, tanadars, and pikes, provided in 1774.

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was provided; *) but on the 14th April 1775, he desired to relinquish his trust, as finding the duty of it too heavy, and the responsibility too dangerous. The superintendence and control of the administration of criminal justice were, in consequence, transferred to MOHUMMUD RUZÁ KHÁN; who, in October 1775, was, at the recommendation of the Governor and Council, appointed *Naib Názim*, as well as guardian of the young Nuwáb MOBÁRUK ŏŏ-DOULAH; and the court of *Nizamut Adawlut* was removed back from Calcutta to Moorshedabad. †

Superintendence of criminal justice transferred to the *Nuwab* MOHUMMUD RUZA KHAN, as *Naib Nazim*, in 1775.

On the 6th of April 1781, the establishment of foujdars and tanadars, which had not been found to produce the good effects intended by this institution, was abolished; and the judges of the Court of Dewanny Adawlut were "invested with "the power, as magistrates, of apprehending decoits, or per- "sons charged with the commission of any crimes, or acts of "violence, within their respective jurisdictions." They were not, however, empowered to try or punish such persons; nor to detain them in confinement; but were required to "imme- "diately send them to the darogah of the nearest foujdarry "court with a charge in writing setting forth the grounds on "which they had been apprehended." At the same time, to enable government to observe the effects of the authority thus entrusted to the judges of the civil courts; as well as to any zemindars who, with the permission of Governor General and Council, might be invested with similar police jurisdiction; and to watch over the general administration of criminal justice;

Establishment, of foujdars and tanadars abolished; and powers vested in the judges of the dewanny adawluts, as magistrates in 1781.

Office of remembrancer of the criminal courts, established at the same time, under the control of the Governor General, to receive reports, and enable Government to watch over the general administration of criminal justice.

* See the plan of this establishment, and the grounds upon which it was founded, in the proceedings of the Governor and Council, under date the 19th April 1774, page 120, of Mr. COLEBROOKE's Compilation before noticed. It is only necessary to remark here, that all persons "convicted of receiving fees, or other pecuniary acknowledgements, from robbers, knowing them to be such, or of abetting or conniving in any shape at their practices," were declared equally criminal with them, and punishable with death.

† The proceedings of Government, connected with this measure, are included in Mr. COLEBROOKE's compilation, p. 125 to 128.

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an office was eſtabliſhed at the Preſidency, under the immediate control of the Governor General, to receive monthly returns and reports from the magiſtrates, and from the Naib Nazim; to arrange which, and to maintain an effectual check on all perſons empowered with the adminiſtration of criminal juſtice, an officer was appointed to act under the Governor General, with the title of remembrancer of the criminal courts. *

Powers veſted in the magiſtrates by a regulation for the adminiſtration of juſtice in the foujdarry courts, paſſed in 1787.

In June 1787, when, in conſequence of inſtructions from the Court of Directors, the offices of collector, judge, and magiſtrate (except in the cities of Dacca, Moorſhedabad and Patna) were united in the ſame perſon; but under diſtinct rules for his guidance in each capacity; a regulation, conſiſting of twenty-nine articles, was enacted, and printed, for "the adminiſtration of juſtice in the foujdarry or criminal courts, in Bengal, "Behar, and Oriſſa." * By this regulation it was made the duty of the magiſtrate "to apprehend all murderers, robbers, "thieves, houſe-breakers, or other diſturbers of the Peace; "and to ſend them to take their trial, accompanied with a writ-"ten charge in the Perſian language, to the neareſt foujdarry "court." The Magiſtrate was "further inveſted with power "to hear and determine, without any reference to the fouj-"darry courts, all complaints or proſecutions brought before "him for petty offences, ſuch as abuſive language, or calumny, "inconſiderable aſſaults or affrays; and to puniſh the ſame, "when proved, by corporal puniſhment not exceeding fifteen "rattans; or impriſonment not exceeding the term of fifteen "days: but, in all caſes affecting either the life or limbs of "the party accuſed, or ſubjecting him to a greater puniſh-

* Vide the reſolutions of Government reſpecting the arrangements made in April 1781—P. 128 to 130 of Mr. Colebrooke's compilation. But they do not contain any modifications of, or addition to, the proviſions of the Mohummudan law.

† See this regulation in Mr. Colebrooke's compilation—P. 131 to 140.

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" ment than that above ſpecified," the caſe was ordered to be referred to the neareſt foujdarry adawlut, the darogah of which, with reſpect to the trial of cauſes, was declared " totally independent of the magiſtrate; but ſubject in every " reſpect to the Nuwab MOHUMMUD RUZA KHAN, in his ca- " pacity of *Naib Nazim*;" who was directed to " correſpond " with the Governor General, and Members of the criminal " courts, upon all foujdarry ſubjects, as heretofore." The other detailed proviſions, of the regulation paſſed on the 27th June 1787, do not call for particular mention in this place; and have been ſuperſeded by the regulations ſubſequently enacted.

THE power veſted in the magiſtrates, to take cognizance of petty offences, obviated in ſome degree the hardſhip and inconvenience which had before been experienced, from the neceſſity of delivering over for trial, to the darogah of the foujdarry court, all parties charged with a breach of the peace, however ſlight, or any other criminal act, however trivial in its nature and conſequences. But as all crimes of conſequence were ſtill excluſively cognizable by the Naib Nazim, and his ſubordinate officers; as the ſentences of the *Nizamut Adawlut*, held at Moorſhedabad under the ſuperintendence of the Nuwab MOHUMMUD RUZA KHAN, were final; and not notified to government until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the *Naib Nazim*, and removable at his pleaſure; and as he poſſeſſed an almoſt excluſive control over thoſe courts and their proceedings; many defects in the Mohummudan law, and abuſes in the adminiſtration of it, were left unremedied; and continued to prevail, till the latter part of the year 1790; when the ſyſtem now in force (except that the offices of magiſtrate and collector had not then been ſeparated) was introduced by Marqueſs CORNWALLIS.

Advantages derived from empowering the magiſtrates to take cog i- zance of petty offences.

But many de- fects in the Mo- hummudan law, and abuſes in the a'minif- tration of it, by the Naib Na- zim, and h s officers, ſtill left unremedied.

IN His Lordſhip's Minute recorded on the 1ſt December 1790, after

Minute of Mar- queſs CORN- WALLIS in 1790, ſtating the exiſting defects,

and propoſing amendments, which introduced the ſyſtem now in force.

after noticing the meaſures adopted for amending or rendering more efficient the criminal juriſprudence of the native government, from 1773 to 1787, he ſtated the following information and ſuggeſtions. " Still the general ſtate of the adminiſtration of criminal juſtice throughout the provinces is exceedingly and notoriouſly defective. With a view to aſcertain more particularly the nature and cauſes of the defects, and to collect the neceſſary information for remedying them, I directed ſome queries to be ſtated to the magiſtrates of the ſeveral diſtricts, from their anſwers to which it will appear that the evils complained of proceed from two obvious cauſes: 1ſt The groſs defects in the Mahommedan law; and 2ndly. The defects in the conſtitution of the courts eſtabliſhed for the trial of offenders. A proviſion againſt the firſt of theſe defects cannot otherwiſe be made than by our correcting ſuch parts of the Mahommedan law as are moſt evidently contrary to natural juſtice, and the good of ſociety. That this government is competent to ſuch an amendment of that law, as may appear thus eſſentially neceſſary, cannot, I think, admit of a doubt; ſince being entruſted with the government of the country, we muſt be allowed to exerciſe the means neceſſary to the object and end of our appointment; beſides that we appear to poſſeſs a ſufficient legal recognition of the right in queſtion from this, that the alterations made in the eſtabliſhed Mahommedan law of the country by the firſt code of judicial regulations of 1772, and more particularly that entire alteration, and new and very ſevere proviſion therein contained, for the puniſhment of decoits, together with the ſuperintendence and controul over all the new criminal courts which the ſaid regulations veſted in the Company's covenanted ſervants, ſtand both fully ſubmitted to Parliament in the ſixth report of the Committee of Secrecy, already quoted, as a diſcretional act of legiſlation by the Preſident and Council in the year 1772; and yet ſo far was the Parliament from diſapproving thereof, or limiting

miting in any reſpect the authority of our government in India, that with this information before it, and having theſe reports as the ground-work of the law then paſſed, the Act of the 13th of George the Third, Chapter 63d, and Section 7th, veſts the ordering, management, and government, of all the territorial acquiſitions and revenues in the kingdoms of Bengal, Behar, and Oriſſa, in the Governor General and Council, for ſuch time as the territorial acquiſitions and revenues ſhall remain in the poſſeſſion of the ſaid Company, in like manner (as the ſaid act recites) to all intents and purpoſes whatever, as the ſame now are, or at any time heretofore might have been, exerciſed by the Preſident and Council, or Select Committee, in the ſaid kingdom. And as it was then before the legiſlature that the Preſident and Council had interpoſed, and altered the criminal law of the country; ſuch alterations, and all future neceſſary amendments thereof, appear, by the above clauſe, to be legally ſanctioned and authorized. As we thus appear to poſſeſs authority to introduce any neceſſary amendments in the laws of the country, it is ſurely incumbent on us not to allow any longer the flagrant abuſes in the foujdarry department, or exerciſe of criminal juſtice, according to the Mahomedan law, throughout the provinces; by the moſt received opinions among the native diſtributors of which a murderer is not liable to capital puniſhment, if he commit the act by ſtrangling, drowning, poiſoning, or with a weapon, ſuch as a ſtick or club, on which there is no iron; or by ſuch an inſtrument as is not uſually adapted to the drawing of blood. That this part of the law ſhould be abrogated, and the apparent intention of the criminal in ſuch inſtances made to regulate his ſentence, inſtead of the mere mode of the commiſſion of the crime, ſeems evidently to follow from the plaineſt principles of natural reaſon. It need therefore be only farther obſerved, that we have the greater encouragement for this alteration from the conſideration, that even the Mahomedan law itſelf is not entirely ſettled upon the moſt important diſtinc-

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tion; for although the Doctor ABOO HUNEEFA (by whoſe ſentiments proceedings in criminal caſes are generally regulated in India) is of the opinion I wiſh to ſee corrected; yet his immediate diſciples and ſucceſſors, YOOSUF and MAHOMMED, (who were lawyers of the greateſt eminence) gave a very different judgment; contending and laying down as a rule of law, that the intention, and not the mode or inſtrument, ſhould be conſidered, in caſes of deprivation of life by the act of a ſecond perſon. SHAREEF, a great lawyer, and a follower in general of ABOO HUNEEFA, ſays in the beginning of the *Shareefeeyah*, "that the puniſhment of retaliation, or death for death, is denounced againſt thoſe who commit homicide with an intention apparently malicious, as by wounding with a drawn weapon, or other dangerous inſtrument, by which the parts of a body may probably be divided, as with a ſharp ſtone, or by uſing fire, which acts as powerful as any weapon; but a mulct, or expiation, or penance, is the legal puniſhment of thoſe manſlayers whoſe intent is not apparent; as if they ſtruck with an inſtrument which does not generally occaſion death, as a wand, or a whip, or a ſmall ſtone." He makes the *intent* the criterion, and ſo reaſonable and well grounded has this laſt opinion been found, that both the Mahommedan government, and our own, have from time to time availed themſelves of it to award capital puniſhment againſt ſuch offenders; as will appear in the late correſpondence with the Reſident at Benares, and from the proceedings of the Preſident and Council in the year 1773, already quoted."

"THE next alteration I would propoſe is that already alluded to, in regard to the option left to the next of kin to remit the ſentence of the law, and pardon the criminal. The evil conſequences, and the crimes which thereby eſcape puniſhment, are ſo manifeſt and frequent, that to take away the diſcretion in the relations ſeems abſolutely requiſite to ſecure an equal adminiſtration of juſtice, and will conſtitute a ſtrong additional

additional check on the commiſſion of murder or other crimes, which are no doubt often perpetrated under the idea of an eaſy eſcape, through the notorious defect of this part of the exiſting law; which at firſt perhaps was confined to appeals or private proſecutions by the next of kin, and had no application to public proſecutions in the name of the ſovereign; and which is beſides peculiarly inapplicable to this country (however it may have ſuited the ſociety it was originally intended for), becauſe where Brahmins commit murder on any perſon of the Hindoo religion, they know that they do ſo with almoſt perfect impunity; ſince in moſt caſes it cannot be expected that any Gentoo will ever deſire or be conſenting to the death of a Brahmin; of which a caſe exactly in point is now depending before the Board from Benares, where a Brahmin having wantonly killed his wife, has, although confeſſing and convicted of the crime, been pardoned by her relations. I therefore propoſe:

Modifications of the Mohummudan criminal law, propoſed by Marqueſs CORNWALLIS.

"1ſt. THAT the doctrine of YUSUF and MAHOMMED, in reſpect to trials for murder, be the general rule for the officers of the courts to write the futwas or law opinions applicable to the circumſtances of every trial, and that the diſtinctions made by ABOO HUNEEFA as to the mode of the commiſſion of murder be no longer attended to; or in other words, that the intention of the criminal, either evidently or fairly inferrable from the nature and circumſtances of the caſe, and not the manner or inſtrument of perpetration (except as evidence of the intent) do conſtitute the rule for determining the puniſhment; a propoſition which cannot even be ſaid to be any violation of the law of the Muſſulmans; but only a rational preference given to the opinions delivered by two of their moſt learned doctors, in contradiction to that of their maſter, from whom, after full conſideration, they both diſſented; and we have it in evidence before us that the beſt ſubſequent, or more modern, law authorities among the Ma-

hommedans, do expreſsly, in caſes where ABOO HUNEEFA and his ſaid two diſciples differ, leave it to the *Hakim*, or ruling power, to make an option between their varying ſentiments; upon which ground I think it is plainly our duty to adopt, in all ſuch caſes, the opinion of either that ſhall appear moſt rational; and fitted to promote the due and impartial adminiſtration of juſtice.

" 2dly. THAT the relations be in future debarred from pardoning the offender; and that the law be left to take its courſe upon all perſons convicted, without any reference to the will of the kindred of the deceaſed."

" 3dly. I THINK that where the Mahommedan law preſcribes amputation of legs and arms, or cruel mutilation, we ought to ſubſtitute temporary hard-labor, or fine, and impriſonment, according to the circumſtances of the caſe. I am of opinion alſo that a rule ſhould be made for allowing decoits, and other criminals, to become witneſſes againſt each other, in the manner of King's evidence in England; care being always taken that no perſon be ever convicted on the ſole teſtimony of accomplices unleſs their credit be ſupported by circumſtances."

Proviſions made, in conſequence, in a regulation paſſed on the 3d December 1790;

PROVISIONS to the effect of the Governor General's firſt and ſecond propoſitions, above ſtated, were accordingly included in a regulation, of fifty-two articles, " for the adminiſtration of " juſtice, in the foujdary and criminal courts, in Bengal, Behar " and Oriſſa," paſſed on the 3d December 1790. Further proviſions for the more effectual attainment of the object of the ſecond propoſition, under a ſcrupulous adherence of the law officers to the preſcribed rules of Mohummudan Law, as well as for a commutation, in all caſes, of the legal penalty of mutilation, to impriſonment and hard labor, and for preventing the religious tenets of witneſſes from being conſidered in any caſe

And in ſubſequent regulations of 1791 and 1792.

a bar to the admiſſion of their evidence, were alſo enacted, on different dates, in the years 1791 and 1792. *—But as they were re-enacted, with additions or modifications, in Regulation IX, 1793, hereafter ſpecified, it does not appear requiſite to notice them in this place. The rules paſſed for the guidance of the magiſtrates, courts of circuit, and Nizamut Adawlut, on the 3d December 1790, and during the two ſucceeding years, were likewiſe re-enacted, with alterations, by Regulation IX, 1793. It will be ſufficient therefore to remark here, that the defects in the conſtitution of the criminal courts, noticed by Marqueſs CORNWALLIS as the ſecond cauſe of the general imperfect adminiſtration of criminal juſtice, (in addition to thoſe ariſing from the proviſions of the Moſulman law, adminiſtered by Mohummudan judges,) were ſtated in His Lordſhip's minute, already quoted, to be as follows. " The priſoners whoſe caſes are referred for the final ſentence of the Nizamut Adawlut at Moorſhedabad are not tried by that court; but in the ſubordinate criminal courts of the diſtricts in which they are apprehended. From the time of their commitment by the magiſtrate, they remain in the cuſtody of the darogah, or judge of the criminal court, with whom it reſts to determine when they ſhall be tried; what witneſſes ſhall be ſummoned; to what points they ſhall be examined; and in what manner their evidences ſhall be taken down; and as theſe courts are moſtly ſituated at a great diſtance from the place of reſidence of the Nabob MAHOMMED RUZA KHAN, and the Engliſh magiſtrates upon the ſpot are prohibited from interfering with their proceedings, it is in the power of the officers, with little probability of detection, to frame proceedings, which, when tranſmitted to the Naib Nazim, muſt inevitably procure the acquittal of the priſoner; or by protracting his trial, to obligethe proſecutors to abandon the proſecution, or agree to a compromiſe.

Re enacted, with additions, or modifications, in Regulation IX, 1793.

Further extract from Minute of Marqueſs CORNWALLIS, ſtating defects in the conſtitution of the criminal courts, as ſubſiſting in the year 1792.

* See the whole of the rules paſſed in 1791 and 1792, as well as the regulation of 3d December 1790, in Mr. COLEBROOKE's compilation—p. 141 to 167.

A reference to the annexed reports from the ſeveral magiſtrates will evince that the enormities daily committed throughout the country, are to be attributed more to theſe and other abuſes, which too generally prevail in the ſubordinate courts, than to the defects of the criminal law. The length of time which generally elapſes between the commitment of a priſoner, and the paſſing of his ſentence, is another evil of the greateſt magnitude, reſulting from the preſent conſtitution of the criminal courts. This delay, even in caſes where it does not originate from connivance between the priſoner and the officers of juſtice, is attended with the moſt pernicious effects. If the priſoner is at length acquitted, he nevertheleſs ſuffers all the conſequences of a long and painful impriſonment. If he is convicted, and ſentenced to ſuffer the puniſhment due to his crime, the delay defeats the object of his puniſhment; which is to deter others from committing the ſame crime. For it has been juſtly obſerved "that puniſhment ſhould follow the crime as early as poſſible, that the proſpect of gratification or advantage, which tempts a man to commit the crime, ſhould awaken the attendant idea of puniſhment." But it is unneceſſary to have recourſe to the teſtimonies of the magiſtrates to prove the abuſes practiced in theſe courts. The multitude of criminals with which the jails in every diſtrict are now crouded, the numerous murders, robberies and burglaries, daily committed, and the general inſecurity of perſon and property which prevails in the interior parts of the country, are melancholy proofs of their having long and too generally exiſted. Having experienced therefore the inefficacy reſulting from all the criminal courts and their proceedings being left dependent on the Nabob MAHOMMED REZA KHAN, and from the objections which he may be naturally diſpoſed to feel, on the ground of his religion, to any innovations in the preſcribed and cuſtomary rules and application of Mahommedan law; we ought not, I think, to leave the future controul of ſo important a branch of government to the ſole diſcretion of any native, or indeed of any ſingle perſon whomſoever."

Consequent provision made by regulation of 3d December 1790, for re-eſtabliſhing the Nizamut Adawlut at Calcutta; its conſtitutions and powers.

ON the grounds ſtated, with a view that the future trials of offenders might be conducted with expediton and impartiality, and that the ſupreme government might be enabled to ſuperintend the general adminiſtration of criminal juſtice, it was propoſed by Marqueſs CORNWALLIS, and provided by the regulation of 3d December 1790, abovementioned, "that the Nizamut Adawlut, or chief criminal court, be again removed from "Moorſhedabad and eſtabliſhed at Calcutta. That this court "(inſtead of being ſuperintended by a native judge, ſubject to "the control of the Preſident of the Board, as heretofore) do "conſiſt of the Governor General and Members of the Supreme Council, aſſiſted by the Kazee-ool-Koozat, or head "Kazee of the provinces and two Mooftees. That the court "do exerciſe all the powers lately veſted in the Naib Nazim, as "ſuperintendent of the Nizamut Adawlut, leaving the declaration of the law, as applicable to the circumſtances of the "caſe, to the Kazee-ool-Koozat and Mooftees, agreeably to former practice. That the deciſions of the court be in all caſes "regulated by the Mohummudan law, under the reſtrictions "contained in the regulations." Four courts of circuit, ſuperintended reſpectively by two covenanted civil ſervants of the Company, and each having a Kazee and Mooftee to aſſiſt the judges and expound the Mohummudan law, were at the ſame time eſtabliſhed for the trial of offences not puniſhable by the magiſtrates; and they were directed to hold two general jail deliveries annually at the ſtations of the ſeveral magiſtrates within their diviſions; commencing their firſt circuit on the 1ſt March, and the ſecond on the 1ſt October of each year. In caſes of acquittal, and of puniſhment leſs than death, or impriſonment for life, in which the judges of the courts of circuit might approve the Futwa of their law officers, they were empowered to paſs a final ſentence. But in caſes of death or perpetual impriſonment, as well as in all caſes where the judges might diſapprove the futwa of their law officers, they were required to tranſmit their proceedings for the ſentence of the Nizamut Adawlut.

Four courts of circuit alſo eſtabliſhed for the trial of offences not puniſhable by the magiſtrates. Half yearly jail deliveries to be held by them. And, under what reſtrictions, ſentence to be paſſed by them.

Particular rules enacted for guidance of the courts of circuit and Nizamut Adawlut, will be specified in the next section.

THE more particular rules enacted, and now in force, for the guidance of the courts of circuit and Nizamut Adawlut, will be ſpecified in the next ſection. The remainder of the preſent ſection will be confined to the modifications of, or additions to, the Mohummudan criminal law, which have been enacted by the regulations of 1793, and ſubſequent years.

Rule for delivery of futwas on trials for murder according to the doctrine of YOOSUF and MOHUMMUD, and for infliction of puniſhment according to the intention of the criminal, without regard to the inſtrument, except as evidence of the intent R. IX, 1793, § I, and LXXV.

BY Section L, Regulation IX, 1793, it was provided, that on trials for murder the law officers of the courts of circuit ſhall deliver their futwas according to the doctrines of YOOSUF and MOHUMMUD; and by Section LXXV, of the ſame regulation, a ſimilar proviſion was made reſpecting the futwas of the law officers of the Nizamut Adawlut, with a further declaration, that the diſtinctions made by ABOO HUNEEFAH and his two diſciples, "as to the mode of committing murder, "ſhall not be adhered to by the Nizamut Adawlut, but the "intention of the criminal, evidently or fairly inferible from "the nature and circumſtances of the caſe, and not the "manner or inſtrument of perpetration (except as evidence "of the intent) ſhall conſtitute the rule for determining the "puniſhment." Theſe proviſions were extended to Benares by Section XXII, Regulation XVI, 1795, and were re-enacted for the ceded provinces by Section XIX, Regulation VII, and Section X, Regulation VIII, 1803. It was alſo expreſsly declared by Section V, Regulation VIII, 1799, (re-enacted for the ceded provinces in the Firſt Clauſe of Section X, Regulation VIII, 1803,) that "wilful homicide by poiſon or by "drowning, when the intention of poiſoning or drowning "may be evident, is included in the above rule; and that "in all ſuch caſes the Nizamut Adawlut, whatever may be "the futwa of their law officers, are to ſentence the priſoner "to ſuffer death; provided they judge him fully convicted "of wilful murder, and do not conſider him a proper object "of mercy."

Extended to Benares by R. XVI, 1795, § XXII.

And re enacted for the ceded provinces, by R. VII, 1803, § XIX; and R. VIII, 1803, § X.

The above rule expreſsly declared to include wilful homicide by poiſon, or by drowning. R. VIII, 1799, § V, re-enacted for the ceded provinces by Firſt Clauſe of § X, R. VIII, 1803.

By

Provisions made for doing away operation of the will of the heirs, in cases of murder. R. IX, 1793, § LII, LV, and LXXVI.

By Sections LII, LV, and LXXVI, Regulation IX, 1793, provisions were made for doing away all operation of the will of the heirs in cases of murder, when they might not demand *Kisás;* or when they might not appear to prosecute, or from minority might not be legally entitled to claim retaliation of death. But the whole of the cases, in which the Mohummudan law allows an option to the heirs of the slain, not having been expressly mentioned, a doubt arose upon the propriety of applying, to the cases not particularized, the rules contained in the above sections; which were therefore rescinded by Section II, Regulation IV, 1797; and the two following sections (which have been since re-enacted for the ceded provinces in the Second Clause of Section XV, Regulation VII, and in Section XI, Regulation VIII, 1803,) were substituted for them.

Rescinded by R. IV, 1797, § II, and two following sections substituted.

Re enacted for Ceded Provinces, by R. VII, 1803, § XV; and R. VIII, 1803, § XI.

§ III. "In trials for murder before the court of circuit, after the proceedings shall have been concluded in the manner prescribed by Section XLVII, Regulation IX, 1793, the law officer of the court, who may be present during the trial, shall be required by the judge to declare whether the prisoner is convicted of the charge against him; and shall subscribe his answer on the record of the court's proceedings. If the law officer shall declare the prisoner to be not guilty, the judge shall pass an immediate sentence of acquittal, and order him to be discharged; unless he shall see cause to disapprove such verdict, in which case he is to refer the proceedings on the trial for the sentence of the Nizamut Adawlut. If the answer of the law officer shall declare the prisoner to be convicted of wilful murder *(kutl-i-úmd);* the judge, without making any reference to the heir or heirs of the slain, shall require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mahomedan law, supposing all the heirs of the slain entitled to prosecute the prisoner for kissas, to have attended and prosecuted him, at an

Courts of Circuit how to proceed in taking futwas from their law officers, and passing sentence thereupon, in cases of homicide.

age

age competent to demand kiſſas, and to have demanded kiſſas. The ſutwah of the law officer upon this reference ſhall be alſo ſubſcribed on the record of the court's proceedings; and whether the ſutwah declare the priſoner liable to ſuffer death, as muſt be the caſe in moſt inſtances of conviction of wilful murder, under the ſuppoſed demand of kiſſas by the heirs of the ſlain; or, whether it declare the priſoner not liable to capital puniſhment, from the heirs of the ſlain not being legally entitled to demand kiſſas, or the failure of retaliation from the parties ſtanding in the relation of parent and child, or maſter and ſlave, or otherwiſe; the judge is, in either caſe, to refer the proceedings for the ſentence of the Nizamut Adawlut, conformably to Section XLVII, Regulation IX, 1793. Should the anſwer of the law officer to the firſt reference acquit the priſoner of wilful murder; but convict him of homicide, of any one of the four denominations diſtinguiſhed in the Mahomedan law, (viz. *ſh bah-i-ûmd; kutl-i-khutá; kutl-i-kâeem-mokâm-i-khutá;* and *kutl-ba ſubub)* the law officer is to declare the preſcribed penalty for the ſame according to the Mahomedan law; and if his futwah ſhould declare the *diyut*, or price of blood, to be the whole, or part, of the legal puniſhment, the court of circuit is to commute the fine to impriſonment for ſuch period as it may conſider adequate to the offence; and its ſentences in ſuch inſtances, as in all others according to the exiſting regulations, are to be carried into execution without reference to the Nizamut Adawlut, if for temporary impriſonment; or referred to that court, if for impriſonment for life; ſubject to the general proviſion contained in Section LIII, Regulation IX, 1793, for referring to the Nizamut Adawlut all trials wherein the Courts of Circuit may diſapprove of the futwahs of their law officers."

Law officers of the Nizamut Adawlut how to deliver their futwahs on trials referred under the preceding rule.

§ IV. "In all caſes referred under the foregoing ſection to the Nizamut Adawlut, the law officers of that court, provided they ſhall be of opinion, that the priſoner is duly convicted of

of murder, ſhall write their futwah upon the caſe referred to the law officer of the court of circuit, aſſuming always that all the heirs of the ſlain, entitled to proſecute for *Kiſás*, attended, and proſecuted at an age which rendered them competent to demand *Kiſás*, and that they demanded *Kiſás*. But if they ſhall be of opinion that the priſoner is not duly convicted of wilful murder, they are to ſtate their reaſons for ſuch opinion, and whether they conſider the priſoner altogether innocent, or convicted of homicide under any of the four denominations diſtinguiſhed by the Mohummudan law; adding, in the latter caſe, the legal penalty to which the priſoner is liable; and the court of Nizamut Adawlut, after conſidering their futwah ſo given, with the whole of the proceedings on the caſe, are either to require further evidence if they ſee occaſion; or, to paſs ſuch final ſentence as may appear conſonant to juſtice and conformable to the Mohummudan law; with the exceptions and modifications which have been, or may be, authorized by the regulations; and ſubject to the ſeveral proviſions therein contained. If in any caſe, not provided for by the regulations, the Mohummudan law appear to the court repugnant to juſtice, they are, notwithſtanding, to adhere thereto, if in favor of the priſoner, in the caſe before them; or, if againſt the priſoner, to recommend a pardon, or mitigation of the puniſhment, to the Governor General in Council; and at the ſame time to propoſe a new regulation to provide againſt a recurrence of the caſe, in the form preſcribed by Regulation XX, 1793."

And the judges of the Nizamut Adawlut how to proceed thereupon.

By the above rules, which require the law officers to give their futwa, and authorize the Nizamut Adawlut to paſs their ſentence, on the ſuppoſition that all the heirs of the ſlain, entitled to proſecute for *Kiſás*, have attended, proſecuted, and demanded *Kiſás*, a complete remedy was applied to the obſtruction of public juſtice, that had been found to ariſe from the influence allowed by the Mohummudan law, in caſes of mur-

A complete remedy applied by the preceding rules, to the obſtruction to juſtice from the influence of the heirs of the ſlain in caſes of murder.

But certain caſes of wilful homicide in which the murderer is not liable to capital punishment under the Mohummudan law, ſtill unprovided for.

der, to the heirs of the ſlain. But caſes of wilful homicide, in which the party convicted is not, under the Mohummudan law, liable to retaliation of death, from the heirs of the ſlain not being legally entitled to demand *Kiſás*, from the relation of parent and child, maſter and ſlave, or otherwiſe; though directed to be referred for the ſentence of the Nizamut Adawlut, had not been ſpecifically declared liable to capital puniſhment.

Further rule to provide for ſuch caſes, in R. VIII, 1799, § II, re enacted for ceded provinces by R. VIII, 1803, § XV.

It was therefore enacted by Section II, Regulation VIII, 1799, and re-enacted for the ceded provinces by Section XV, Regulation VIII, 1803, that "in every caſe of wilful murder, wherein the crime may appear to the court of Nizamut Adawlut to have been fully eſtabliſhed againſt the priſoner, but the futwa of the law officers of that court ſhall declare the priſoner not liable, under the Mahomedan law, to ſuffer death by *Kiſás*, ſolely on the ground of the priſoner's being father or mother, grandfather or grandmother, or other anceſtor of the ſlain; or one of the heirs of the ſlain being the child or grandchild, or other deſcendant of the priſoner; or of the ſlain having been the ſlave of the priſoner, or of any other perſon, or a ſlave appropriated for the ſervice of the public; or on any ſimilar ground of perſonal diſtinction, and exception from the general rules of equal juſtice; the court of Nizamut Adawlut, provided they ſee no circumſtances in the caſe which may render the priſoner a proper object of mercy, ſhall ſentence him to ſuffer death; as if the futwa of their law officers had declared him liable to *Kiſás*; or to ſuffer death by *Seeaſut*, as authorized by the Mahomedan law in all caſes of wilful murder, under the diſcretion veſted in the magiſtrate, with regard to this principle of puniſhment for the ends of public juſtice."

To kill another by his or her deſire, declared unjuſtifiable, and liable to the puniſhment of murder by R. VIII, 1799, § III.

It was at the ſame time declared by Section III, Regulation VIII, 1799, (re-enacted for the ceded provinces by Section XVI Regulation VIII, 1803,) that "after the period fixed for the enforcement of this regulation, it ſhall not juſtify any priſoner convicted

" convicted of wilful homicide, that he, or ſhe, was deſired by " the party ſlain to put him, or her, to death; and in the event " of the priſoner being convicted of the fact to the ſatisfaction " of the Nizamut Adawlut; and of their ſeeing no circum- " ſtances in the caſe which may render him, or her, a proper " object of mercy; they ſhall ſentence him, or her, to ſuffer " death, whatever may be the futwa of their law officers un- " der the Mahomedan law; which in this inſtance alſo, al- " though it withholds Kiſſas, gives a full latitude to the ma- " giſtrate in the diſcretionary puniſhment of *Tazeer* or *Seeaſut*; " and experience has ſhewn the neceſſity of inflicting the pu- " niſhment for murder in ſuch caſes, to preſerve the lives of " many from the effects of paſſion or revenge, aided (eſpecially " in the province of Benares) by the erroneous prejudices of " ſuperſtition."

Re-enacted for ceded provinces by R. VIII, 1803, § XVI.

It was alſo declared by Section IV, Regulation VIII, 1799, (re-enacted for the ceded provinces by Section XVII, Regulation VIII, 1803,) that "if the futwa of the law-offi- " cers of the Nizamut Adawlut declare any perſon, convicted " of wilful murder, not liable to ſuffer death, under the Ma- " homedan law, on the ground of one or more of his accom- " plices being exempted from *Kiſſas*, under any of the cir- " cumſtances recited in Sections II, and III, of this regulation, " or on any ſimilar ground of exemption; the court of Niza- " mut Adawlut ſhall, notwithſtanding ſuch futwa, ſentence " the priſoner to ſuffer death; if in their judgment he be duly " convicted, and be not a proper object of mercy; and in all " caſes, if the accomplice in a wilful murder, though not the " principal perpetrator of the murder, ſhall appear to the " Nizamut Adawlut fully convicted, and deſerving of death, " they are authorized, under the diſcretion given by the Ma- " homedan law in ſuch caſes, to ſentence the priſoner to ſuffer " death, whether the futwa of their law officers declare the " ſame or otherwiſe."

Rule to provide for caſes of wilful murder, in which one or more of the accomplices may be exempt from *Kiſſas*, or in which an accomplice in the murder may appear deſerving of death. R. VIII, 1799, § IV.

Re-enacted for ceded provinces by R. VIII, 1803, § XVII.

UNDER

Reference to the Mohummudan law concerning *Kutl-i-khutá*, or erroneous homicide, which makes no diſtinction between involuntary homicide in the proſecution of a lawful, or unlawful and murderous intention; though there is evident reaſon for diſtinguiſhing them.

UNDER what has been ſtated in the preceding ſection (p. 263) relative to *Kutl-i-khutá*, or erroneous homicide, it appears that a perſon deliberately intending to murder one individual, and accidentally killing another, is not, by the Mohummudan law, held liable to retaliation of death; and that no diſtinction is made between involuntary homicide, in the proſecution of a lawful intention; as for inſtance, ſhooting at a mark and accidentally killing a man; and involuntary homicide in the proſecution of an unlawful and murderous intention; ſuch as ſhooting at a man with an intention to kill him, and by accident killing another man; or even killing the perſon intended to be murdered, if any accident intervene, ſuch as the arrow or other inſtrument of death paſſing by the perſon aimed at, and killing him on a rebound; though the intention being in the firſt caſe innocent, in the two latter caſes criminal, there is evident reaſon for diſtinguiſhing them; and on principles of public juſtice, which regards the detriment and danger to ſociety from the commiſſion of crimes, rather than the individual injury reſulting from them, the homicide actually committed in proſecution of a deliberate intent to commit murder muſt be held juſtly liable to the puniſhment of murder. The ſame reaſoning is equally applicable in caſes of a like nature, where a perſon criminally intending to wound, maim, or otherwiſe do corporal injury to, one individual, may, in the proſecution of ſuch criminal intention, accidentally wound, maim, or otherwiſe corporally injure another perſon. With a view therefore to provide for the due adminiſtration of juſtice in ſuch caſes, and to deter all perſons from the proſecution of unlawful criminal deſigns, by warning them that they will be reſponſible for acts done by them in proſecution of ſuch deſigns, the following rules were enacted by Sections II, III, IV, V, and VI, Regulation VIII, 1801, and re-enacted for the ceded provinces by the ſecond and ſucceeding Clauſes of Section X, Regulation VIII, 1803.

Same reaſoning applicable to wounding, maiming, or otherwiſe injuring one perſon, in the proſecution of a criminal intent againſt another.

Rules enacted to provide for the due adminiſtration of juſtice in ſuch caſes.

R. VIII, 1801, §. II, III, IV, V, and VI.

Re-enacted for the ceded provinces by Second and ſucceeding Clauſes of § X, R. VIII, 1803.

§ II.

§ II. "AFTER the date fixed for the operation of this regulation, any perſon who may be convicted of having, ſubſequent thereto, deliberately and maliciouſly intended to murder one individual, and of having in the proſecution of ſuch intention, accidentally killed another individual, ſhall, on account of the murderous intention and actual homicide, be liable to the puniſhment of murder, in like manner as if he had killed the perſon intended to be murdered. In all ſuch caſes, the law officers of the courts of circuit and of the Nizamut Adawlut (to which court all trials of this deſcription are to be referred) ſhall be required to ſtate what puniſhment the priſoner would have been liable to, if he had committed the murder intended by him; and if their futwa ſhall declare him in ſuch caſe liable to ſuffer death, or if under the futwa ſo given, and the modifications of the Mahomedan law, contained in Regulations IV, 1797, and VIII, 1799, or any other regulation, the priſoner be liable to ſuffer death; the court of Nizamut Adawlut, provided it be eſtabliſhed to their ſatisfaction that the priſoner intended to commit the crime of deliberate and malicious murder; and that the homicide charged againſt him was actually committed by him in the proſecution of ſuch murderous intention; ſhall ſentence the priſoner to ſuffer death; unleſs they ſhall ſee any circumſtances which may, in their judgment, render him a proper object of mercy; in which caſe they are to recommend to the Governor General in Council either the pardon of the priſoner, or a mitigation of his puniſhment, as they ſhall judge proper; ſtating, in either caſe, their reaſons for the pardon or mitigation of puniſhment recommended by them."

A perſon convicted of having intended to murder one individual, and having in the proſecution of ſuch intention, killed another individual, declared liable to the puniſhment of murder.

Court's of circuit, and Nizamut Adawlut, how to proceed in ſuch caſes.

§ III. "THE rule contained in the preceding ſection is to be conſidered equally applicable to any other caſes of homicide, which may be declared by the law officers of the courts of circuit, or Nizamut Adawlut, to be within the Mahomedan law of Kutl-i-Khota, Kutl-i-Kaeem-Mokam-ba-Khota; or

The foregoing rule extended to all caſes of accidental homicide, committed in proſecution of a murderous intention, or any criminal deſign, which if carried into effect, would have ſubjected the

offender to a ſentence of death.

other legal denominations of accidental homicide; but in which the priſoner ſhall be clearly convicted of having committed the homicide proved againſt him, with a murderous intention; ſuch as if carried into effect would have ſubjected him to a ſentence of death; or with a deliberate intention, to commit any crime, that, if committed in purſuance of the priſoner's criminal deſign, would have rendered him liable to a ſentence of death."

In like manner accidentally wounding, maiming, or otherwiſe injuring one perſon, in proſecution of an unlawful malicious intention to wound, maim, or injure another, declared puniſhable as if the act had been committed upon the party intended.

§ IV. "In like manner, after the date fixed for the operation of this regulation, any perſon who may be convicted of having, ſubſequent thereto, unlawfully and maliciouſly intended to wound, maim, or otherwiſe do corporal injury to, one individual; and of having, in the proſecution of ſuch intention, accidentally wounded, maimed, or otherwiſe corporally injured, another individual, ſhall be held puniſhable for the act committed by him with ſuch unlawful and malicious intention, in like manner as if ſuch act had been perpetrated on the perſon intended to have been wounded, maimed, or otherwiſe injured.

Courts of circuit how to proceed in ſuch caſes.

The law officers of the court of circuit, in ſuch caſes, ſhall be required to ſtate the puniſhment to which the priſoner would have been liable if he had committed the act of which he is convicted, upon the perſon intended to have been wounded, maimed, or otherwiſe injured by him; and the courts of circuit ſhall paſs ſentence accordingly, or refer the trial to the court of Nizamut Adawlut, as the caſe may be referrible to that court, or otherwiſe, under the general regulations."

Court of Nizamut Adawlut how to proceed on ſuch caſes, when referred to that court.

§ V. "In trials referred under the preceding ſection to the court of Nezamut Adawlut, the law officers of that court ſhall alſo declare in their futwa to what puniſhment the priſoner would have been liable, if the act, of which he is convicted, had been committed as intended by him; and the court after conſidering ſuch futwa with the whole of the proceeding in the caſe, are to paſs ſuch ſentence on the priſoner, ſhort

ſhort of death, as they may judge adequate to his offence; or if they conſider him a proper object of mercy, may recommend his pardon to the Governor General in Council, ſtating their reaſons for the pardon recommended by them."

Proviſion for commutation of the *Diyut*, to impriſonment, contained in § III, R. IV, 1797, not applicable to the caſes of accidental homicide provided for by the above rules.

§ VI. "SUCH part of Section III, Regulation IV, 1797, as authorizes the courts of circuit, in caſes of kutl-i-khota, and other caſes of accidental homicide, when, the priſoner may be declared liable to the Diyut, or price of blood, to commute ſuch price to impriſonment, is not to be conſidered applicable to any of the caſes noticed in Sections II and III, of this regulation: but is to be in force, as heretofore, with regard to caſes of homicide not otherwiſe provided for by the above ſections. The courts of circuit, however, are not to ſentence the priſoner to ſuffer any impriſonment, or other puniſhment, in the caſes of accidental homicide mentioned in Section III, Regulation IV, 1797, although the Diyut ſhould be declared by their law officers to be payable under the Mahomedan law, if the homicide ſhall clearly appear to have been committed by miſadventure in the proſecution of a lawful act, and without any malignant intention."

But to be in force, as heretofore, in other caſes.

Unleſs the homicide ſhall appear to have been committed by miſadventure, in the proſecution of a lawful act, and without any malignant intention.

Remarks upon Mohummudan law of *Tâzeer* and *Seeâſut*, as ſtated in the preceding ſection; with diſcrimination of caſes to which a diſcretionary power of correction and puniſhment appears applicable.

FROM what has been ſtated in the preceding ſection, relative to the third general head of the Mohummudan criminal law, *Tâzeer* and *Seeâſut*, it appears that the Sovereign and his delegates are inveſted with a diſcretionary power of correction and puniſhment in three caſes. 1ſt. In the caſe of offences for which no ſpecific penalty of *Hudd*, or *Kiſâs*, has been provided by the law; being, for the moſt part, offences not of a heinous nature; the puniſhment of which is left diſcretionary, below the meaſure of the ſpecific penalties, for the correction and amendment of the offender. 2dly. For crimes within the ſpecific proviſions of *Hudd* and *Kiſâs*; when the proof againſt the perſon accuſed, of the commiſſion of ſuch crimes,

may

may not be ſuch as the law requires for a judgment of the ſpecific penalties; though ſufficient to eſtabliſh a ſtrong preſumption of guilt: or although the proof be complete, as required for a ſentence of *Hudd* or *Kiſás*, when ſuch ſentence is barred by a remiſſion of the claim to retaliation in caſes of *Kiſás*, or by any of the ſpecial exceptions which, under the general denomination of *Shoobah*, are conſidered by the prevalent authorities of Mohummudan law to bar a judgment for the ſpecific penalties of that law. 3dly. For the moſt heinous crimes, in a high degree injurious to ſociety, and particularly for repeated offences of this deſcription, which, upon principles of public juſtice, for the ſafety of the community, may appear to require exemplary puniſhment, beyond the preſcribed penalties and ordinary proviſions of the law. In the adjudication of puniſhments under the diſcretion thus allowed by the Mohummudan law, eſpecially in the ſecond of the three caſes ſtated, the futwas of the law officers, attached to the criminal courts, were found to be often governed by a conſideration of the degree of proof againſt the party accuſed, rather than by the degree of guilt, and criminality of the act eſtabliſhed againſt him; and the penalties awarded by them were, in many inſtances, adjudged on inſufficient proof of the charge; whilſt, in others, the penalty declared by them was inadequate to the heinouſneſs of the offence, of which the priſoner had been convicted. It was therefore deemed neceſſary that proviſion ſhould be made for determining the puniſhment to be adjudged by the criminal courts in all caſes wherein a diſcretion is left by the Mohummudan law; as well to guard againſt the infliction of any puniſhment without ſufficient evidence of guilt; as to maintain the uniform and adequate puniſhment of offenders, when convicted, according to the criminality of the offences eſtabliſhed againſt them. The following rules were accordingly enacted for this purpoſe (including the ceded provinces) by Section II, Regulation LIII, 1803.

Futwas of the law officers found to be often governed by a conſideration of the degree of proof againſt the accuſed, rather than by the guilt and criminality eſtabliſhed againſt him.

Neceſſity, in conſequence, for determining the puniſhment to be adjudged by the criminal courts in all caſes wherein a diſcretion is left by the Mohummudan law.

Rules enacted for this purpoſe by § II, R. LIII, 1803.

Firſt.

First. "In all trials before the courts of circuit, wherein the Mohummudan law officers of thoſe courts may conſider the priſoner liable to diſcretionary puniſhment, (tazeer, acoobut, or ſeeaſut;) their futwa ſhall declare the ſame generally, with a ſtatement of the grounds on which the priſoner is adjudged ſubject to diſcretionary puniſhment; leaving the meaſure of puniſhment, in ſuch caſes, to be determined by the judge of circuit before whom the trial may be held, or by the court of Nizamut Adawlut, under the proviſions contained in this, or any other regulation.

Futwa to be given by the law officers of the courts of circuit, in all caſes of diſcretionary puniſhment.

Second. "If the crime, for which the priſoner is declared liable to diſcretionary puniſhment, in ſuch caſes, ſhall have been ſpecifically provided for by any ſubſiſting regulation, denouncing the penalty to be adjudged on proof of the commiſſion of ſuch crime; and the judge, before whom the trial may be held, ſhall conſider the crime to have been eſtabliſhed againſt the priſoner; whether by his free and voluntary confeſſion; or by the teſtimony of credible witneſſes; or by ſtrong circumſtantial evidence; he ſhall ſentence the priſoner to ſuffer the puniſhment for ſuch crime preſcribed by the regulations; or, if the caſe be referrible under the regulations for the ſentence of the Nizamut Adawlut, ſhall tranſmit the trial, with his opinion thereupon, to that court."

Sentence to be paſſed in ſuch caſes if the crime have been provided for by any regulation.

Third. "If the crime, for which the priſoner is declared liable to diſcretionary puniſhment, ſhall not have been ſpecifically provided for by any regulation, denouncing the penalty to be adjudged on proof of the commiſſion of it; but be ſuch as would have ſubjected the priſoner to the ſpecific penalty of Hud, or Kiſas, provided by the Mohummudan law, if he had been convicted by full legal evidence; and the futwa of the law officer ſhall declare him liable to diſcretionary puniſhment in conſequence of the evidence not being ſuch as the Mohummudan law requires for a ſentence of Hud

Second futwa to be required, and ſentence paſſed thereupon, if the crime have not been provided for by any regulation, but be ſuch as would have ſubjected the priſoner to the ſpecific penalty of *Hud*, or *Kiſas*, if he had been convicted by full legal evidence.

or Kiſas; though ſufficient to convict the priſoner on ſtrong preſumptive proof or violent preſumption *(ghálib-oo-zun)*; the judge, before whom the trial may be held, provided he concur in the conviction of the priſoner, ſhall require the law officer to declare, by a ſecond futwa, to what ſpecific puniſhment (of Hud or Kiſas) the priſoner would have been liable, under the Mahomedan law, if he had been convicted by full legal evidence; and ſhall proceed thereupon to paſs ſentence according to ſuch ſecond futwa; (commuting the puniſhment, if any regulation requires it;) or, if the caſe be referrible for the ſentence of the Nizamut Adawlut, ſhall tranſmit the trial, with his opinion, to that court."

Similar mode of proceeding to be obſerved when the crime may not have been provided for by any regulation; and a ſentence of *Hud*, or *Kiſas*, is barred by ſome legal exception or diſtinction, not affecting the nature of the offence, and repugnant to juſtice.

Fourth. "THE judge, before whom the trial may be held, ſhall proceed in like manner as directed in the preceding clauſe, when the crime of which the priſoner is convicted (whether upon full legal evidence, or upon ſtrong preſumptive proof) may not have been ſpecifically provided for by any regulation; but would ſubject the priſoner to the ſpecific penalty of Hud or Kiſas provided by the Mahomedan law, if the ſentence againſt him for ſuch penalty were not barred by ſome ſpecial exception, or ſcrupulous diſtinction (ſhoobah), not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal juſtice; in conſequence of which bar to a judgment for the ſpecific penalty the priſoner is declared liable to diſcretionary puniſhment. In ſuch caſes the law officer is to declare, by a ſecond futwa, to what puniſhment the priſoner would have been liable under the Mahomedan law, for the crime committed by him, if the ſpecial exception or diſtinction, by which Hud or Kiſas is barred in the particular caſe, had not exiſted; and the judge is to proceed thereupon as directed in the preceding clauſe."

Reſtriction, when the ſpecific penalty is

Fifth. "NOTHING in this ſection, however, ſhall be con-

ſtrued

ſtrued as authorizing a ſentence of diſcretionary puniſhment exceeding, or equal to, the ſpecific puniſhment preſcribed by the Mahomedan law, in caſes where ſuch ſpecific penalty is remitted or mitigated by the proviſions of the Mahomedan law, in conſideration of circumſtances which alter the nature, and diminiſh the criminalty, of the offence, unleſs ſuch enhanced or equal puniſhment for the crime in queſtion ſhall have been expreſsly denounced by ſome regulation, in modification of the Mahomedan law."

remitted or mitigated by the Mohummudan law, in conſideration of circumſtances which alter the nature and diminiſh the criminality of the offence.

Sixth. "NOR ſhall any part of the preſent regulation be conſidered to authorize the infliction of any puniſhment whatever upon ſuſpicion only, (termed by the Mahomedan lawyers, *Wuhm*, *Shuk*, or *Shŏobah Zăeefah)* when the evidence againſt the priſoner is undeſerving of credit; or the preſumption of his guilt, ariſing from credible teſtimony, or circumſtantial evidence, is weak; and does not amount to the degree of ſtrong and violent preſumption, held ſufficient for conviction; and recognized as ſuch in the Mahomedan law, under the denominations of *Ghalib-oo-zun*, *Akbur-oo-raee*, *Shoobuh-u-cuvvee*, or *ſhoodeed*. When the judge, before whom a priſoner may be tried, ſhall not conſider him convicted on ſuch preſumptive proof; or on the evidence of credible witneſſes; or on his own confeſſion; he ſhall not ſentence the priſoner to ſuffer any puniſhment; whatever may be the futwa of the law officer. But in caſes of ſtrong ſuſpicion though not amounting to conviction, as well as upon proof of notorious bad character, the judge of circuit may direct the zillah or city magiſtrate to detain the priſoner in cuſtody until he ſhall give ſufficient ſecurity for his future good behaviour, and appearance when required."

For her reſtriction againſt the infliction of any puniſhment, upon ſuſpicion only, not amounting to a ſtrong preſumption of guilt.

But ſecurity may be required in caſes of ſtrong ſuſpicion, as well as upon proof of notorious bad character.

Seventh. "IF the crime, of which a priſoner is convicted, and for which he is declared liable to diſcretionary puniſhment, ſhall neither have been ſpecifically provided for by any regulation;

Courts of circuit how to proceed in caſes of conviction and diſcretionary puniſhment, not ſpecifically provided for by any regula-

tion, or by the Mohummudan law.

regulation; nor by any ſtated penalty in the Mahomedan law; and the judge, before whom the trial may be held, ſhall conſider the crime to have been eſtabliſhed againſt the priſoner, and deſerving of puniſhment; he ſhall, after conſulting with the law officer, reſpecting the meaſure of puniſhment which under the diſcretion left by the law, and the whole of the circumſtances of the caſe, ſhould be inflicted upon the priſoner, adjudge the priſoner to ſuffer ſuch puniſhment as may appear adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal puniſhment of thirty-nine ſtripes; and impriſonment, with hard labor, for the term of ſeven years. If, in any inſtance, this degree of puniſhment appear to the judge of circuit inſufficient, in a caſe not ſpecifically provided for by the Mahomedan law; or the regulations; he ſhall tranſmit the trial, with his ſentiments thereupon, to the court of Nizamut Adawlut."

The foregoing proviſions extended to the court of Nizamut Adawlut, with modification of the clauſe laſt ſpecified. R. LIII, 1803, § VII.

THE ſeveral proviſions made by the above clauſes for the guidance of the courts of circuit, and their law officers, in caſes of diſcretionary puniſhment, were, by the three Firſt Clauſes of Section VII, Regulation LIII, 1803, extended to the court of Nizamut Adawlut, and the law officers of that court, with the following modification of the laſt clauſe ſpecified.

Court of Nizamut Adawlut how to proceed in caſes of diſcretionary puniſhment, not ſpecifically provided for by the regulations, or by any ſtated penalty in the Mohummudan law.

"IN trials referred to the Nizamut Adawlut, under Clauſe Seventh, Section II, of this regulation, viz. when the crime of which the priſoner is convicted, and for which he is declared liable to diſcretionary puniſhment, ſhall not have been ſpecifically provided for, either by the regulations, or by any ſtated penalty in the Mahomedan law, the judges of the Nizamut Adawlut, provided the offence be puniſhable at diſcretion under the Mahomedan law, and they ſhall be ſatisfied of the conviction of the priſoner, are authorized to paſs ſuch ſentence upon the priſoner, not extending to capital puniſhment, as they may deem adequate to the crime of which he is convicted,

and

and conſonant to the general principles of juſtice, on due conſideration of all the circumſtances of the caſe. The court ſhall at the ſame time propoſe to the Governor General in Council a regulation, to fix and declare the ſpecific puniſhment of any crime of magnitude, which may be found not to have been ſpecifically provided for, either by the Mahomedan law, or by the regulations; and which may appear to call for an expreſs denunciation of the penalty to be incurred by committing the ſame."

Recapitulation of proviſions of the Mohummudan law concerning robbery; and neceſſity of making further proviſions for the more certain and adequate puniſhment of robbery, with or without murder, or other acts of criminality.

It has already been obſerved, that the proviſions of the Mohummudan law for the puniſhment of high-way robbery cannot, according to the prevailing doctrines, be applied to robberies committed in any other place than on, or near, the high-way, at a diſtance from any inhabited place; and that, even with reſpect to theſe, the ſpecific penalty is barred, if any one of the band of robbers be under age; or lunatic; or dumb; or a relation, within the prohibited degrees, of the perſon robbed or murdered; or if ſuch perſon be not a Moſulman, or under the permanent protection of a Mohummudan government; or if any of the robbers have a joint intereſt in the property plundered; or ſuch property be not in legal cuſtody with reſpect to any one of the robbers; or its value be leſs than ten *Dirms* (between two and three Rupees) for the ſhare of each robber. Theſe diſtinctions being evidently repugnant to the principles of public juſtice; and the atrocious crime of gang-robbery, with frequent murder, maiming, burning, or other aggravating circumſtances, continuing to prevail in many diſtricts (eſpecially within the province of Bengal, where the puſillanimous diſpoſition of the inhabitants prevents, in general, their making any oppoſition to a numerous and armed banditti;) it became highly requiſite that proviſion ſhould be made for the more certain and adequate puniſhment of robbery, with or without murder, or other aggravating acts of criminality. The following rules

were accordingly enacted by Sections III, IV, and V, Regulation LIII, 1803, for the court of circuit; and by the fourth clauſe of Section VII, of the ſame Regulation, were extended to the Nizamut Adawlut; the judges of which court were thereby "authorized to adjudge the ſtated puniſhment, whatever may be the futwa of their law officers; provided that it ſhall declare the priſoner, or priſoners, to have been convicted of the crimes incurring the ſtated penalties; either on free and voluntary confeſſion, or on the teſtimony of credible witneſſes; or on ſtrong circumſtantial evidence (ſufficient to eſtabliſh *ghalibzun*, or violent preſumption of guilt) and provided the judges of the Nizamut Adawlut ſhall ſee no cauſe to diſapprove ſuch conviction of the priſoner or priſoners; or to mitigate, or remit the ſpecified puniſhment.

R. LIII, 1803, § III. What perſons ſhall be deemed guilty of the crime of robbery by open violence; and how puniſhable on conviction.

Firſt. "ANY perſon or perſons, who ſhall, in the day or in the night, go forth with any offenſive weapon, or in a gang with or without an offenſive weapon, with the criminal intent of committing robbery, and ſhall, by force or intimidation, rob or attempt to rob, any perſon, or perſons, on or near a highway; or on a river, lake, or other water; or in or near a city, town, or village; or in any other place whatever; or ſhall attack by open violence, and rob, or attempt to rob, any dwelling houſe, or other houſe or building; or any tent, boat, or other receptacle of perſons or property, in which there may be any perſon or property at the time of ſuch robbery, or of ſuch attempt to rob; ſhall be deemed guilty of the crime of robbery by open violence; (denominated in the Mahomedan law *Suruca-i-kobra*, and more commonly *Shubkhoonee*, or *Dukytee*,) and on due conviction thereof, whether by free and voluntary confeſſion, or by the teſtimony of credible witneſſes, or by ſtrong circumſtantial evidence, ſhall be adjudged to ſuffer ſuch of the penalties declared in the next ſection, as may be applicable to the caſe, viz. according as the robbery may be with, or without, homicide, wounding, maiming, or other perſonal injuries;

injuries; or with or without other circumſtances of aggravation."

Second. "In ſuch caſes of robbery by open violence, the puniſhment of the offenders ſhall not depend upon the amount, value, or deſcription of the property plundered. Nor ſhall any of the circumſtances noticed in the preamble to this regulation, as barring a ſentence of *Hud* under the Mahomedan law, in caſes of highway robbery, nor any other proviſion in that law, be hereafter allowed to operate againſt the puniſhment of perſons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clauſe of this ſection; or of murder, or other acts of criminality committed in the proſecution of ſuch robbery; or of an intent to rob: provided, as in all other caſes of criminal conviction and puniſhment, that the party convicted be adult, and of ſound underſtanding, ſo as to render him a proper object of puniſhment."

The puniſhment not to depend upon the amount or value of the property plundered; nor to be affected by any of the circumſtances which bar a ſentence of *Hud* under the Mohummudan law; or by any proviſion in that law, if the party convicted be a proper object of puniſhment.

Third. "In all ſuch caſes, of conviction of robbery by open violence; or of murder, or other criminal acts, done in proſecution of ſuch robbery, or of an intent to rob; if the law officer of the court of circuit declare the priſoner liable to diſcretionary puniſhment, the judge, before whom the trial may be held, is to proceed as directed in Clauſe Second, Section II, of this regulation. If the law officer declare the priſoner liable to ſuffer death under the Mahomedan law, the judge is to refer the trial to the court of Nizamut Adawlut, with his opinion, as directed by the exiſting regulations; or, if the law officer declare the priſoner liable to amputation of limb under the Mahomedan law, the judge is either to refer the trial for the ſentence of the Nizamut Adawlut; or to commute the puniſhment and paſs ſentence againſt the priſoner, in conformity to the enſuing ſection; according as the degree of puniſhment to be adjudged, or any proviſion in the

Courts of circuit how to proceed, upon the futwas of their law officers, in ſuch caſes.

the regulations, may require a reference of the trial for the ſentence of the Nizamut Adawlut, or otherwiſe."

In caſes of murder committed in the proſecution of robbery, what perſons liable to a ſentence of death.

§ IV. *Firſt.* "ALL perſons convicted of being the heads or leaders of a gang of robbers, by whom a murder may have been committed; or of having been actively concerned in the perpetration of ſuch murder; or of any murder committed in the proſecution of robbery, or an intent to rob; or of having been preſent, aiding, and abetting when ſuch murder was committed; or, though not preſent, of having procured and cauſed, by hire, counſel, or command, the perpetration of ſuch murder, in purſuance of a preconcerted plan to commit the ſame, or to commit robbery; ſhall be adjudged to ſuffer death."

In caſes of wounding, or other perſonal injury, not occaſioning homicide, or of atſon or other aggavating act of criminality committed in the proſecution of robbery, what perſons ſubject to imprisonment and tranſportation for life.

Second. "ALL perſons convicted of being the heads or leaders of a gang of robbers, by whom any perſon may have been wounded, maimed, burnt, or ſubjected to other perſonal injury, torture or cruelty, not occaſioning homicide; or by whom a dwelling houſe or houſes, may have been ſet on fire; or any other criminal and aggravating act committed, in the proſecution of a robbery, or intent to rob; as well as perſons convicted of having been actively concerned in any of the acts aforeſaid, done in proſecution of a robbery, or intent to rob; or of having been preſent, aiding and abetting, when any ſuch acts were committed; or, though not preſent, of having procured and cauſed, by hire, counſel, or command, the perpetration of any ſuch acts in purſuance of a preconcerted plan to commit the ſame, or to commit robbery; ſhall be adjudged to ſuffer impriſonment and tranſportation for life. Moreover, any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime deſcribed in this clauſe; or without ſuch repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the diſcretion allowed by the Mahomedan law in caſes of ſeeaſut, may be puniſhable with death; and which may appear to the court of Nizamut

Or, in ſpecial caſes, to a ſentence of death.

Adawlut

Adawlut to render ſuch heinous offenders deſerving of capital puniſhment; ſhall be liable to a ſentence of death."

Third. "ALL perſons convicted of being the heads or leaders of a gang of robbers by whom a robbery may have been committed without homicide; and without any perſonal injury, or other act of aggravation, as ſpecified in the preceding clauſe; or by whom any violent attempt ſhall have been made to commit ſuch robbery, though not effected; as well as perſons convicted of having been actively concerned in any ſuch robbery, or attempt to rob; or having been preſent, aiding, and abetting at ſuch robbery, or attempt to rob; or, though not preſent, of having procured and cauſed, by hire, counſel, or command, the perpetration of ſuch robbery, or attempt to rob, in purſuance of a preconcerted plan for this purpoſe; ſhall be adjudged to ſuffer impriſonment and hard labor for the period of fourteen years. The court of Nizamut Adawlut are further empowered to extend their ſentences, to impriſonment and tranſportation for life, upon any leaders of gangs, or other offenders, convicted of a repetition of the crime deſcribed in this clauſe; or without ſuch repetition, if from proof of the notorious bad character of the party convicted, or on conſideration of any other circumſtance appearing upon the trial to aggravate the guilt of any particular priſoner, and evince the danger of his future depredations, if ſet at liberty, it ſhall, in the judgment of that court, be juſt and neceſſary to inflict a more ſevere puniſhment than impriſonment and labor for the term of fourteen years."

In caſes of robbery, or an attempt to rob, without homicide, perſonal injury, or other act of aggravation, what perſons liable to impriſonment and hard labor for fourteen years.

Or, in ſpecial caſes, to impriſonment and tranſportation for life.

Fourth. "PERSONS convicted of going forth with a gang of robbers for the purpoſe of committing robbery, but apprehended before they have committed ſuch, or have made any violent attempt for the purpoſe, ſo as to bring them within the proviſion contained in the preceding clauſe, ſhall be adjudged to ſuffer impriſonment and hard labor for ſuch period, not

Perſons going forth to rob, but apprehended before they have committed robbery, or made any violent attempt, how puniſhable on conviction.

exceeding ſeven years, as the circumſtances of the caſe may appear to merit."

Proviſion for a mitigation of the puniſhment ſtated in the foregoing clauſes, under any extenuating circumſtances; or if the example appear ſufficient without extending the full puniſhment to the whole of the priſoners convicted.

Fifth. "PROVIDED with reſpect to all the crimes, and degrees of puniſhment, ſpecified in the ſeveral clauſes of this ſection; if, from any extenuating circumſtances, which may appear on the trial before the courts of circuit, or court of Nizamut Adawlut, the ſtated puniſhment ſhall, in any particular inſtance, appear too ſevere; or if on conſideration of the number of priſoners convicted of the ſame crime, and of any diſcriminative circumſtances with reſpect to one or more of them, the example ſhall appear ſufficient for the ends of juſtice, without extending the full degree of the preſcribed puniſhment to the whole of the priſoners convicted; it ſhall be competent to the court of Nizamut Adawlut, or to the courts of circuit, if the trial be not referrible under the regulations to the Nizamut Adawlut, to mitigate the ſentence, in ſuch caſes, as may be deemed juſt and expedient."

Further proviſion for the caſes of any priſoners who may appear proper objects of mercy and pardon.

Sixth. "THE courts of circuit are alſo to report to the Nizamut Adawlut, and that court, if it appear neceſſary, will report to the Governor General in Council, the caſe of any priſoner or priſoners, who may appear proper objects of mercy and pardon; or if the puniſhment to which they are ſentenced ſhall not have been adjudged under any proviſion of the Mahomedan law, or the regulations, expreſsly requiring the ſame, the court of Nizamut Adawlut, as already authorized, may remit the puniſhment, and order the diſcharge of the priſoner, without reporting the caſe for the orders of the Governor General in Council."

What ſentences to be paſſed by the criminal courts in caſe of ſecret theft, or larceny, without open violence, whether accompa-

§ V. *Firſt.* "No part of the preceding ſection ſhall be conſidered applicable to ſecret theft; or larceny without open violence; *(Suruca-i-ſogra)*; whether accompanied with burglary, *(Nuccub-zunee,)* or ſimple theft from the perſon or houſe,

houſe, unaccompanied with any aggravating circumſtance. In ſuch caſes the Mahomedan law, with the modifications of it in the exiſting regulations, and the rules contained in Section II, of this regulation, when the priſoner may be declared liable to diſcretionary puniſhment, ſhall govern the ſentences of the courts of circuit; as well as of the Nizamut Adawlut in any caſes referred to that court."

ated with burglary, or ſimple theft from the perſon or houſe.

Second. "But in the caſe of a burglarious entry, or any entry by night, into a dwelling houſe, or other houſe; or into a tent, boat, or other receptacle of perſons and property, for the purpoſe of committing theft therein; although ſuch entry may have been made in the firſt inſtance without any open violence; if any perſon or perſons ſhall, after having entered, be guilty of murdering, wounding, maiming, torturing, or otherwiſe doing perſonal injury to any perſon or perſons, or of any other criminal act of violence, done in the proſecution of the original intention to commit theft; the parties convicted, as principals or accomplices, of ſuch murder, wounding, maiming, or other acts of criminality and violence, done in the proſecution of theft, ſhall be liable to the ſame puniſhment as has been declared in the preceding ſection, for the ſame acts of criminality committed in proſecution of robbery by open violence: and the ſeveral proviſions contained in that ſection, as well as in Section III, of this regulation, are accordingly declared equally applicable to the caſes herein ſpecified."

But murder, wounding, or any other act of violence, done in proſecution of an original deſign to commit theft, declared liable to the ſame penalties, as if done in proſecution of robbery by open violence.

Corporal puniſhment by ſtripes, which had formerly conſtituted part of the uſual puniſhment for robbery, in caſes ſhort of death, not having been ſpecified in the rules above quoted; and inſtances having occurred in which the village watchmen, who are bound to aſſiſt the police officers in protecting the inhabitants of the country, and their property, from robbery, were found to have been concerned in the perpetration of this crime:

Reaſons for adding corporal puniſhment by ſtripes, to the fixed penalties for robbery, in caſes ſhort of death; and for ſubjecting any village watchmen or officers of police, convicted of being concerned in, or having connived at robbe

ly, to more exemplary punishment, in proportion to their aggravated criminality.

crime; strong grounds of suspicion also having appeared that even some of the public officers upon the police establishments had connived at the commission of robbery, or at the escape of persons residing within their jurisdictions, who from information, or notoriety, were known to be robbers; the following rules were enacted by Regulation III, 1805, for subjecting offenders, convicted of so highly criminal and dangerous a violation of duty, to more exemplary punishment, proportionate to their aggravated criminality, and its danger to the community; as well as for enabling the criminal courts to adjudge corporal punishment, in all cases of conviction of robbery, when it may appear proper to inflict such punishment."

Regulation III, 1805. In what case of robbery the criminal courts may adjudge corporal punishment by stripes of the corah, and to what extent.

§ II. "In all cases of conviction of the crime of robbery by open violence, as defined in Clause First, of Section III, Regulation LIII, 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstancial evidence; and the party so convicted may not be sentenced to suffer death; the court of circuit, before whom the offender may be convicted, and the court of Nizamut Adawlut, in trials referred to that court, shall be competent to adjudge corporal punishment, not exceeding thirty-nine lashes with a corah, in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for the period of fourteen years, prescribed by Clauses Second and Third of Section IV, Regulation LIII, 1803; whenever, on consideration of the nature of the case, it may appear proper to inflict such additional exemplary punishment."

Persons convicted of going forth to commit robbery, but apprehended before the commission of it, also declared liable to stripes, and to what extent.

§ III. "Persons convicted of the crime provided for by Clause Fourth, of Section IV, Regulation LIII, 1803, viz. of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose; and declared

clared by the clauſe abovementioned, liable to impriſonment and hard labor for ſuch period, not exceeding ſeven years, as the circumſtances of the caſe may appear to merit, are further hereby declared liable to corporal puniſhment, not exceeding thirty laſhes with a corah, in addition to, or in commutation of, the whole or part of the impriſonment provided for by the clauſes above cited; whenever it may be expedient, for the ſake of example, or to prevent a lengthened impriſonment of the priſoner, to the court of circuit before whom he may be convicted, or to the Nizamut Adawlut in any caſes referred to that court."

Village watchmen, or guards, of whatever denomination, and all police officers, of whatever deſcription, convicted of robbery by open violence, and not liable to ſuffer death under the Firſt Clauſe of § IV, R. LIII, 1803, declared liable to the ſpecial puniſhment for aggravated criminality, provided for by the Second and Third Clauſes of that ſection.

§ IV. "If any pyke, chokeedar, paſban, doſaad, nigabaan, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any other perſon, for the protection of villages, houſes, perſons, or property, and conſequently required by the regulations to aſſiſt the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officer of whatever deſcription, (whether a police darogah, or tehſeeldar entruſted with the charge of the police, a city or town cutwal, or a jemadar, mohrir, burkundoſs, piadah, or other perſon employed under the zillah or city magiſtrates, the police darogahs and tehſeeldars, or under any other officers of the police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police; connected with the prevention of public offences;) ſhall be convicted of the crime of robbery by open violence, as deſined in Clauſe Firſt, of Section III, Regulation LIII, 1803; whether ſuch conviction be founded upon the free and voluntary confeſſion of the priſoner, or upon the teſtimony of credible witneſſes, or upon ſtrong circumſtantial evidence; and the party ſo convicted, ſhall not be liable to ſuffer death, under Clauſe Firſt, of Section IV, Regulation LIII, 1803, as an

accomplice in murder, as well as robbery; it is hereby declared, that he ſhall be held and expreſsly deemed to be within the proviſions contained in Clauſes Second and Third of that Regulation, whereby the Nizamut Adawlut are authorized to paſs ſentence of death, in caſes of aggravated criminality, which may appear to deſerve it, although the robbery may not have been attended with actual homicide; or where the robbery may have been without any perſonal injury or other act of aggravation, to extend the ſentence of that court, from impriſonment and hard labor for fourteen years, to impriſonment and tranſportation for life; if on conſideration of any circumſtance appearing upon the trial to aggravate the guilt of any particular priſoner, the infliction of ſuch more ſevere puniſhment ſhall appear juſt and neceſſary. Under this declaration any watchman, guard, or police officer, as deſcribed in the preſent ſection, who may be convicted of having been preſent, aiding and abetting, at a robbery by open violence, or at an attempt to commit ſuch robbery; or though not preſent, of having procured and cauſed by hire, counſel, or command, the perpetration of ſuch robbery, or attempt to rob, will be liable to ſuffer death, on the ſentence of the court of Nizamut Adawlut, according to the regulations, if in the proſecution of ſuch robbery, or attempt to rob, any perſon ſhall be murdered, wounded, maimed, burnt, or ſubjected to other perſonal injury, torture or cruelty; or any dwelling houſe ſhall be ſet on fire; or other criminal and aggravating act committed; or will be liable to a ſentence of corporal puniſhment, and impriſonment and tranſportation for life, by the court of Nizamut Adawlut, if the proſecution of ſuch robbery, or attempt to rob, ſhall not have been attended with homicide, perſonal injury, or any of the other aggravating acts above ſpecified. It is hereby further declared, that any clear and direct connivance on the part of a watchman, guard, or police officer, as deſcribed in this ſection, whereby a gang of robbers may have

Connivance of a watchman, guard, or police officer, whereby a gang of robbers may be enabled to com-

have been enabled to commit any of the crimes above ſtated, ſhall, if duly eſtabliſhed, ſubject the offender to the ſame penalty, as he would have been liable to, if actually preſent, aiding and abetting; or, though not preſent, if he had procured and cauſed the perpetration of the offence, by hire, counſel, or command."

mit robbery or other act or criminality; how puniſhable on conviction.

V. "If any watchman, guard, or police officer, as deſcribed in the preceding ſection, ſhall be convicted of going forth with a gang of robbers for the purpoſe of committing robbery, or of conniving at the going forth of a gang of robbers for ſuch purpoſe, but he, or they, may be apprehended before they have committed robbery, or made any violent attempt for the purpoſe; the watchman, guard, or police officer, ſo convicted, ſhall be liable to corporal puniſhment, and impriſonment, with hard labor, for ſuch period, not exceeding fourteen years, as the circumſtances of the caſe, may, in the judgment of the court of circuit, before whom he is convicted, appear to merit; or if that court ſhall, in any particular caſe, deem the priſoner deſerving of more exemplary puniſhment, they ſhall refer the trial to the court of Nizamut Adawlut, who are authorized, if ſufficient ground appear, to extend the ſentence to corporal puniſhment and impriſonment, with tranſportation for life."

A village watchman, or guard, or any police officer, convicted of going forth to commit robbery, or conniving at a gang of robbers going forth, to what puniſhment liable, if the robbery be not committed; nor any violent attempt made, for the purpoſe.

§ VI. "The explanation contained in the two Clauſes of Section V, Regulation LIII, 1803, reſpecting the diſtinction to be obſerved in caſes of ſecret theft, or larceny, without open violence, and of criminal acts of violence done in proſecution of the original intention to commit theft, ſhall be applied, in like manner, to the ſeveral proviſions contained in the preſent regulation. But if any police officer, or any guard or watchman, bound to aſſiſt the officers of police, as deſcribed in Section IV of this regulation, ſhall be convicted of theft, or of larceny and burglary, though without any act of open violence, or of

Any police officer, guard, or watchman, convicted of theft, or of larceny and burglary, without any act of open violence, or of connivance at the perpetration of ſuch crime, to what puniſhment liable.

clear and direct connivance at the perpetration of such crime, he shall be liable to suffer such aggravation of punishment as the court of circuit, before whom he may be convicted, or the Nizamut Adawlut, if the case be referrible to that court, shall deem adequate to his offence; not exceeding the limitations prescribed by Clause Seventh, of Section II, and Clause Third, of Section VII, Regulation LIII, 1803, for cases not specifically provided for by the regulations, or by any stated penalty in the Mahomedan law."

Rule for commuting mutilation to imprisonment and hard labor. Regulation IX, 1793, Section LI; extended to Benares by Regulation XVI, 1795, Section XXII; and re-enacted for ceded provinces by Regulation VII, 1803, Sections XX and XXI.

By Section LI, Regulation IX, 1793, (extended to Benares, by Section XXII, Regulation XVI, 1795, and re-enacted for the ceded provinces, by Sections XX and XXI, Regulation VII, 1803,) it is provided that no criminal shall suffer the punishment of mutilation. If a prisoner be declared by the futwa of the law officers liable to the penalty of losing two limbs; instead of being made to undergo such punishment, he is to be imprisoned and kept to hard labor for fourteen years: or, if declared liable to lose one limb, he is, in lieu of such punishment, to be imprisoned and kept to hard labor for seven years.

Rule for admitting the evidence of witnesses who are not of the Mohummudan religion, and courts of circuit how to proceed in such cases, Regulation IX, 1793, Section LVI, extended to Benares by Regulation XVI, 1795, Section XXII; and re-enacted for ceded provinces by Regulation VII, 1803, Section XXV.

By Section LVI, Regulation IX, 1793, (extended to Benares by Section XXII, Regulation XVI, 1795, and re-enacted for the ceded provinces by Section XXV, Regulation VII, 1803,) it is further declared that the religious persuasion of witnesses shall not be considered a bar to the conviction or condemnation of the prisoner. When the evidence given on a trial may be deemed inadmissible, on the ground of the persons giving such evidence, not professing the Mohummudan religion, the law officers of the courts of circuit are to declare what would have been their futwa, supposing such witnesses to have been Mohummudans. The courts of circuit are not to pass sentence in such cases, but are required to transmit the record of the trial, with the futwa of their law officers, to the Nizamut Adaw-

lut; which court, if it approve the proceedings held on the trial, is empowered to paſs ſuch ſentence as would have been paſſed, had the witneſſes, whoſe teſtimony is deemed inadmiſſible, been of the Mohummudan perſuaſion.

Brahmins exempted from capital puniſhment in the province of Benares. B. R. XVI, 1795, § XXIII.

THE city of Benares being conſidered the principal ſeat of the Hindoo religion, which holds ſacred the life of a Brahmin, it is provided by Section XXIII, Regulation XVI, 1795, (originating in an order of Government paſſed on the 8th October 1790, but having operation in the province of Benares only,) that "no Brahmin ſhall be puniſhed with death. "In caſes in which a Brahmin ſhall be declared by the law "liable to ſuffer death, he ſhall in lieu of ſuch puniſhment, be "ſubject to be ſentenced by the Nizamut Adawlut, to tranſpor-"tation. The court of circuit is not to paſs ſentence in any "ſuch trials, but is to forward them to the Nizamut Adawlut, "for their final ſentence."

How puniſhable, when declared ſubject to a legal ſentence of death.

The reverence paid by the Hindoos to Brahmins perverted, in ſome parts of the Benares province, to a defiance of the laws.

THE reverence paid by the Hindoos to Brahmins, and the injury to caſt and credit, which enſues from being the cauſe of their death, have, in ſome parts of the province of Benares, been converted into the means of ſetting the laws at defiance. On the approach of a public officer to ſerve any judicial or revenue proceſs, or to exerciſe any coercion on the part of government, over the Brahmins in queſtion, they have been known to lacerate their bodies with knives or razors; or to ſwallow or threaten to ſwallow poiſon, or a powder declared to be ſuch; or to conſtruct a circular encloſure called a *Koorh*, in which they raiſe a pile of wood or other combuſtibles, and place within the area an old woman, with a view to ſacrifice her by ſetting fire to the *Koorh*; in which caſe it is believed that after death ſhe will become the tormentor of thoſe who occaſion her being ſacrificed. It has alſo been a practice with the Brahmins referred to, on their not obtaining ſpeedy relief for any loſs or diſappointment, and upon

An encloſure called a *Koorh*, ſometimes conſtructed for the ſacrifice of an old woman.

Their females and children alſo at times deſtroyed, in reſentment for perſonal arreſt, or other coercion.

any public proceſs being iſſued againſt them, to cauſe their women and children to ſit down in the view of the officer charged with ſuch proceſs; to brandiſh their ſwords; and threaten to behead or otherwiſe deſtroy their females or children on the nearer approach of the officer; and inſtances have occurred in which, from reſentment at being ſubjected to arreſt or other coercion, they have actually put ſuch menaces into execution. A proclamation was iſſued throughout the province of Benares, on the 7th July 1799, for the purpoſe of putting a ſtop to the murder of women and children in the manner above deſcribed; and proviſions for the ſame purpoſe, as well as for preventing the conſtruction of a *Koorh*, and the commiſſion of any act of violence, or the threat of it, under the circumſtances ſtated, are contained in the ten firſt ſections of Regulation XXI, 1795. The magiſtrates, on receiving information that a Brahmin has eſtabliſhed a *Koorh*, or has prepared to maim, wound, or deſtroy any of his women or children, as above deſcribed, is to require the Brahmin, by a written notice, to remove the *Koorh*, and deſiſt from any act of violence towards his women or children; aſſuring him, at the ſame time, that on his compliance, due enquiry will be made concerning any ſubject of diſcontent. If this notice, (which is to be ſerved through ſome relation or friend of the Brahmin; or in default of ſuch by a ſingle Hindoo peon;) ſhall not prove effectual, the magiſtrate is to iſſue a warrant, to be executed by peons of the Mahomedan religion, for apprehending the Brahmin, and on his appearance is to proceed as in other charges of a criminal nature, for inveſtigating the truth of the facts alleged; and bringing the priſoner to trial, if there appear grounds for it, before the court of circuit. If that court judge the priſoner convicted of having been principally concerned in conſtructing a *Koorh*, or in preparing to wound or ſlay any women or children, the court are to ſentence him to the payment of a fine, equal to

Proclamation iſſued in 1799, to put a ſtop to the murder of women and children, in the manner deſcribed;
And proviſions for the ſame purpoſe, as well as for preventing the conſtruction of a *Koorh*, and the commiſſion of any act of violence, or the threat of it, under the circumſtances ſtated, included in the ten firſt ſections of B. R. XXI, 1795.
The magiſtrates how to proceed in ſuch caſes.

Sentence to be paſſed by the criminal courts on conviction of the priſoner's having been concerned as principal, or accomplice in conſtructing a

the

the eſtimated amount of his annual income; or of a fine equal to one fourth of ſuch amount, if he be convicted, to the court's ſatisfaction, of having been concerned as an accomplice only. Such ſentences are to be tranſmitted within ten days to the Nizamut Adawlut, which court may order any mitigation of the fines impoſed, that it ſhall judge proper; but in the mean time the ſentence of the court of circuit is to be conſidered in force; and carried into effect by impriſonment, unleſs ſecurity be given for payment of the fine adjudged, within ſix months. The perſon convicted is alſo, previouſly to his enlargement, to give ſatisfactory ſecurity that he will not commit the like offence in future. It is further provided, that the actual burning to death, or otherwiſe killing, any perſon by ſetting fire to a *koorh*, as well as the actual putting to death of any woman or child by a ſword, or other offenſive weapon, in the manner above deſcribed, ſhall be puniſhable as murder; and that in the latter caſe the family of any Brahmin, convicted of murder, ſhall be liable to baniſhment, and his eſtate to forfeiture. The wounding any woman or child on account of a real or ſuppoſed injury, as ſtated, is likewiſe declared puniſhable by tranſportation. The proviſions for theſe purpoſes, with reſtrictions whereby the ſentence muſt, in all caſes, be reported for confirmation to the court of Nizamut Adawlut, and may be mitigated, at the recommendation of that court, by the Governor General in Council, are included in Sections VII, VIII, IX, and X, of Regulation XXI, 1795, to the following effect.

koorh, or in preparing to wound or ſlay any women or children.

The actual burning to death, or otherwiſe killing any perſon in the manner deſcribed, is puniſhable as murder.

The family of any Brahmin convicted of murdering a woman or child as ſtated, is liable to baniſhment, and his eſtate to forfeiture.

The wounding any woman or child, as ſtated, is likewiſe declared puniſhable by tranſportation.

Proviſions for theſe purpoſes, included in R. XXI, 1795, § VII, VIII, IX, and X.

§ VII. If any Brahmin or Brahmins, on account of any diſcontent or alarm, well or ill founded, ſhall eſtabliſh a *koorh*, in which any perſon or perſons ſhall, at any period from its conſtruction until its removal, be burnt to death, or otherwiſe loſe their lives, in conſequence of ſuch Koorhs being ſet fire to, by any perſon whomſoever; the Brahmin or Brahmins who ſhall have cauſed the conſtruction thereof, ſhall be held chargeable

Bramins eſtabliſhing a *koorh* in which any perſons may be put to death, and perſon employed, or aiding in ſetting fire thereto, how to be proceeded againſt.

chargeable with, and made amenable for, the crime of murder; as well as the party or parties who may have been immediately employed, or aided, in ſetting fire to the pile or combuſtibles in queſtion; and upon proof of the fact to the ſatisfaction of the court of circuit, ſuch Brahmin or Brahmins and ſuch perſon or perſons ſetting fire to the Koorh, ſhall be ſentenced, on trial before the ſaid court, to ſuffer the puniſhment of death, in the ſame manner as if they had committed and been convicted of *kutl-umd*, or premeditated murder, according to the doctrines of the Mahomedan law; and with a view to render the example as public as poſſible, ſuch ſentence (whether conſiſtent with the futwah of the Mahommedan law officers, or otherwiſe,) is in this caſe, to be accordingly formally paſſed by the court of circuit on the Brahmin or Brahmins thus convicted; but it is to be at the ſame time explained to the party or parties thus condemned, as it is alſo hereby expreſsly provided, that all ſuch trials, and the ſentences paſſed, are by the court of circuit to be ſubmitted (in like manner as is preſcribed in Section XLVII, Regulation IX, 1793,) to the Nizamut Adawlut; and the party or parties, condemned under this ſection, are to remain in jail to await the final judgment of that court; and if the Nizamut Adawlut ſhall approve of the condemnation, it ſhall order the Brahmin or Brahmins in queſtion to be conveyed to Calcutta, to be thence tranſported for life, in conformity to Section XXIII, Regulation XVI, 1795, which eſtabliſhes this commutation for the legal puniſhment of murder perpetrated by Brahmins within the province of Benares; or, if the court of Nizamut Adawlut ſhall ſee cauſe for not proceeding purſuant to the ſentence paſſed by the court of circuit, either in reſpect to the Brahmin or Brahmins who may have cauſed the conſtruction of the Koorh, or to the party or parties who may have been employed, or aided in firing it, they ſhall ſubmit the caſe or caſes to the Governor General in Council, and either recommend a pardon, or ſuch other

other commutation by way of mitigation of the puniſhment, as to the ſaid court may ſeem proper."

§ VIII. "If any Brahmin or Brahmins, under the circumſtances, and in the manner, deſcribed in the preamble to and the following ſections of this regulation, or under ſuch circumſtances, and in ſuch manner, as ſhall be ſubſtantially ſimilar thereto, with a ſword, or other offenſive weapon, or otherwiſe, ſhall actually wound his or their women or children, or other women or children, or any or either of them, on account or in reſentment of any real or ſuppoſed injury committed towards him or them, by any aumils, tehſeeldars, or other officers, or ſervants employed in the revenue or judicial departments; or ſhall ſo wound any of his or their own women or children, or any other woman or child, on account or in reſentment of, his or their differences with any individual; he or they ſhall, for ſuch act or acts, be ſentenced by the court of circuit to tranſportation, ſubject to the ſame reference to the Nizamut Adawlut, and to the like commutation of the puniſhment, or pardon, as in the caſes referred to in Section VII."

Brahmins wounding any women or children under the circumſtances ſtated, how to be proceeded againſt.

§ IX. "If any Brahmin or Brahmins, under the circumſtances, and in the manner, deſcribed in the preamble to and ſubſequent ſections of this regulation, or under ſuch circumſtances, and in ſuch manner, as ſhall be ſubſtantially ſimilar thereto, with a ſword or other offenſive weapon, or otherwiſe, ſhall actually put to death his or their women or children, or other women or children, or any or either of them, on account or in reſentment of any real or ſuppoſed injury, committed towards him or them, by aumils, tehſeeldars, or any other officers, or ſervants, employed in the revenue or judicial departments; or ſhall ſo put to death any of his or their own women or children, or any other woman or child, on account or in reſentment of, his or their differences with any individual; he or they ſhall be tried for ſuch homicide, and on proof of

Brahmins putting to death any women or children, with a ſword or otherwiſe in the manner deſcribed, how to be proceeded againſt.

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the fact or facts, be accordingly ſentenced by the court of circuit to capital puniſhment, ſubject to the ſame reference to the Nizamut Adawlut, and to the like commutation of the puniſhment, or pardon, as in the caſes referred to in Section VII; and the families of any Brahmin or Brahmins found guilty of murder under this ſection, ſhall, according to the order of the Governor General in Council under date the 17th of June 1789, and the publication made in conformity to it by the Reſident at Benares, under date the 7th of July of the ſame year, be baniſhed from the province of Benares, and the Company's territories; and his and their eſtates in land ſhall be forfeited, and diſpoſed of as to Government ſhall ſeem proper; and accordingly, the court of circuit is required to ſubjoin this order to all ſentences that they may paſs on Brahmins for murd erunder this ſection, at the ſame time reporting ſuch ſentence and order to the Nizamut Adawlut, together with as accurate an account as they may be able to procure, of the number, ſex, and age, of the perſons compoſing the family of ſuch Brahmin or Brahmins, and annexing their opinion how far it may be adviſable or otherwiſe, rigorouſly to enforce the baniſhment of the family of ſuch Brahmin or Brahmins, or to confirm, or mitigate, or annul, the order for the forfeiture of their real property; and the Nizamut Adawlut, on conſideration of this ſentence and order, and of the opinion of the court of circuit, ſhall either wholly confirm, or recommend to the Governor General in Council ſuch mitigation of the ſaid ſentence and order, as ſhall appear to them proper; and in all caſes where the forfeiture of the landed property of ſuch Brahmin or Brahmins, and that of his and their family, ſhall be confirmed by the Nizamut Adawlut, the ſaid court is to adviſe the Governor General in Council thereof, nor ſhall ſuch ſentence be carried into execution as far as regards the forfeiture of the landed property, without an order from the Governor General in Council, approving ſuch part of the ſentence, and directing in what manner the lands thus forfeited ſhall be diſpoſed of."

Rule for baniſhment of their families, and forfeiture of their landed eſtates.

Subject to confirmation of Nizamut Adawlut, and to mitigation of ſentence by the Governor General in Council, at the recommendation of that court.

§ X.

§ X. "In the exerciſe of the diſcretion veſted in the Nizamut Adawlut by Section IX, of recommending to the Governor General in Council, the mitigation of ſentences and orders paſſed by the court of circuit, under the ſaid ſection, it ſhall be a rule, that whenever the Governor General in Council ſhall in conſequence deem it proper to limit the baniſhment either to the party or parties committing the murder, or to a certain number only of his or their family or families; no confiſcation or forfeiture of the landed property ſhall in ſuch inſtances take place, but the ſame ſhall be entirely left in the poſſeſſion, and as the property, of thoſe members of the family who ſhall be exempted from baniſhment."

Eſtate not to be forfeited, if any part of the offender's family be exempted by Government from tranſportation.

Another practice reſorted to by Brahmins, as well as occaſionally by other deſcriptions of perſons, is called *Dhurna*. The object of it is to realize any claim of right, ſuch as the recovery of a debt, without having recourſe to judicial proceſs; or to extort a donation; for which purpoſe the demandant, providing himſelf with poiſon, or with ſome offenſive weapon, takes poſt at the door of the perſon upon whom he propoſes to enforce his demand; and threatens to remain faſting until his requiſition be complied with; or to deſtroy himſelf if any moleſtation be offered. In this caſe it is underſtood to be incumbent upon the party, who is the cauſe of the Brahmin's faſting, to abſtain alſo from nouriſhment, until the latter be ſatisfied; and even ingreſs and egreſs, to and from his houſe, is in a great degree prevented. To put a ſtop to this practice, ſo open to abuſe, and to become the means of undue exaction, a proclamation was iſſued in the province of Benares on the 22d December 1792; and a rule of proceeding was eſtabliſhed by Sections XI and XII, Regulation XXI, 1795, (extended to perſons of all caſts, as well as Brahmins, by Section VI, Regulation VIII, 1799,) whereby any Brahmin

Notice of another practice, by Brahmins and others, called *Dhurna*.

Proclamation iſſued to put a ſtop to this practice in 1792.

And rule of proceeding eſtabliſhed by B. R. XXI, 1795, § XI and XII, extended to perſons of all

castes, as well as Brahmins by § VI, R. VIII, 1799

Brahmin ſitting dhurna may be apprehended by a warrant from the magiſtrate, and on conviction before the court of circuit, may be ſentenced by that court "to be expelled from "the province of Benares and to forfeit all title to the right "or claim, for realizing of which the miſdemeanor ſhall "have been committed. But this ſentence is not to be car- "ried into execution until it ſhall have been reported by the "court of circuit to the Nizamut Adawlut; and it ſhall have "been either wholly confirmed, or directed to be enforced, "under ſuch mitigation as to the expulſion from the province, "or to the forfeiture of the right or claim of the priſoner or "priſoners to the property for which he or they ſat dhurna, "as to the ſaid court ſhall ſeem proper." In charges of dhurna a *Bewuſta*, or expoſition of the Hindoo law, is to be taken from the Pundit of the court (inſtead of a futwa from the Mohummudan law officer) as to whether the facts in evidence amount to proof of the priſoner's having committed dhurna; and it is explained by Section VI, Regulation VIII, 1799, that "the pundits, in delivering the Bewuſta required from them, are not to conſider themſelves reſtricted to the exact definition of dhurna in the Shaſter; but are to regard the common conſtruction of that term and practiſe, and the circumſtances generally underſtood to denote it, whether deſcribed in the Shaſter under the technical denominations of *dherm, bebhar, chullona, achrit*, or any other mode of dureſs practiced by individuals without authority from the magiſtrate, for the recovery or extortion of money." The rules enacted for the prevention of Dhurna, in the province of Benares, were re-enacted for Bengal, Bahar, and Oriſſa, by Regulation V, 1797, and for the ceded provinces by Sections IX and X, Regulation III, 1804, with the following modifications. After the evidence upon the trial has been cloſed before the court of circuit, the judge, before whom the trial is held, is to tranſmit it to the ſudder ſtation of the diviſion, where the other judges of the court of circuit are to take a

The rules for prevention of *Dhurna*, in the province of Benares, re-enacted with modifications, for Bengal, Behar, and Oriſſa, by R. V, 1797; and for the ceded provinces, by § IX and X, R. III, 1804.

Bewuſta

Bewuſta from the Pundit of the provincial court, and in the event of the priſoner's conviction, are to ſentence him to forfeit all title to the right or claim for the realization of which the miſdemeanor ſhall have been committed; and to pay a fine to Government, proportionate to his ſituation and circumſtances in life, provided that the amount ſhall not exceed in any caſe the ſum of one thouſand ſicca rupees and under the general reſtriction, with reſpect to fines, contained in Section III, Regulation XIV, 1797, and Section XXXIX, Regulation VII, 1803, that a definite period of impriſonment be fixed, as equivalent to the fine, in the event of its not being paid. In inſtances attended with great aggravation, the priſoner may be further ſentenced to confinement in the dewanny jail for a period not exceeding one year; and in all caſes the ſentence of the court of circuit, if it correſpond with the *Bewuſta* of their Hindoo law officer, may be carried into effect without reference to the Nizamut Adawlut. The whole of the courts of circuit are moreover authorized, although the priſoner may not be legally convicted of Dhurna, if they ſhould be of opinion from the evidence before them, that he did in fact commit that offence according to the common conſtruction of the term, to take from him an engagement declaring that if he ſhall again perform any act of a nature ſo ſimilar to Dhurna as ſhall on his proſecution before the court of circuit be deemed by the judge or judges of that court equivalent to Dhurna, he will be liable for ſuch ſecond offence, to ſuffer the full penalty of Dhurna.

Barbarous cuſtom among the tribe of Raj-comars, of deſtroying their infant female children.

A BARBAROUS cuſtom, which is ſuppoſed to have originated in principles of family pride, and apprehenſion of diſhonor, from inability to provide for daughters by a ſuitable marriage, was formerly prevalent amongſt the tribe of Raj-comars, inhabiting the borders of the province of Benares, as well as ſome parts of the ceded provinces, of deſtroying their infant female children, by ſuffering them to periſh for want of

 ſuſtenance

Obligation taken from the Raj-comars, in Benares; with a view to the diſcontinuance of this practice, in 1799.

And rule contained in B. R. XXI, 1795, § XIII, as well as in § XI, R. III, 1804, for the ceded provinces, whereby any Raj-comar killing his child, in the manner ſtated, is declared liable to be tried, on a charge of murder.

ſuſtenance. With a view to prevent the continuance of this inhuman practice in the province of Benares, an obligation was taken from the Raj-comars referred to, in the month of December 1799; and by Section XIII, Regulation XXI, 1795, for Benares as well as by Section XI, Regulation III, 1804, for the ceded provinces, any Raj-comar who ſhall deſignedly cauſe the death of his female child, by prohibiting its receiving nouriſhment, or in any other manner, is declared liable to trial, as in other criminal caſes, before the court of circuit and Nizamut Adawlut, on a charge of murder.

Proclamation iſſued, and rule enacted by § VI, R. IV, 1797. (re-enacted for the ceded provinces by § XXXIV, R. VII, 1803.) to prevent perſons being put to death on the ground of their practiſing ſorcery.

In conſequence of two men of the ſutár caſt having been convicted of the murder of five women, ſaid to have practiced ſorcery, a proclamation was publiſhed in February 1792, and September 1794, and enacted into a Regulation for the provinces of Bengal, Bahar, Oriſſa, and Benares, by Section VI, Regulation IV, 1797. (re-enacted for the ceded provinces by Section XXXIV, Regulation VII, 1803,) to the following effect. "If any perſon or perſons of the ſutar caſt, or of any other caſt or perſuaſion, within the Britiſh territories, ſhall hereafter put any perſon to death, on the ground of his or her being verſed in, and practiſing ſorcery; ſuch perſon or perſons, on being convicted of the crime, ſhall be held guilty of murder, and ſhall be invariably puniſhed accordingly: and if any perſons ſhall either actually form themſelves into an aſſembly, for the purpoſe of trying any man or woman on a charge of witchcraft; or any other charge; or ſhall cauſe ſuch aſſemblies to be held; and any perſon or perſons ſhall in conſequence be put to death; they ſhall be conſidered to be principals, or accomplices, in the murder, and be dealt with accordingly."

Practice of facrificing children by expoſing them to be drowned, or devoured by ſharks.

In the year 1802, it was repreſented to Government, that a practice of facrificing children, by expoſing them to be drowned, or to be devoured by ſharks, continued to prevail at the

Iſland

Iſland of Saugur, and at the other places on the river Ganges. At Saugur eſpecially, ſuch ſacrifices were ſaid to be made at fixed periods, namely, the day of full moon in November and in January; at which time alſo grown perſons have devoted themſelves to a ſimilar death. This practice was ſtated to ariſe from ſuperſtitious vows; but, on enquiry, was not found to be ſanctioned by the Hindoo law; nor countenanced by the religious orders; or by the people at large: nor was it, at any time, authorized by the Hindoo or Mahomedan Governments in India. The perſons concerned in the perpetration of the crime were therefore, on conviction, liable to the puniſhment of murder; but for general information, as well as for the more effectual prevention of the practice in future, it was publickly declared by Section II, Regulation VI, 1802, that "If "any perſon or perſons ſhall wilfully, and with the intention "of taking away life, throw or cauſe to be thrown, into the "ſea, or into the river Ganges, or into any other river or "water, any infant, or perſon not arrived at the age of matu-"rity, with or without his or her conſent, in conſequence "whereof ſuch perſon, ſo thrown into water, ſhall be drowned, "or ſhall be deſtroyed by ſharks or by alligators, or ſhall "otherwiſe periſh; the perſon or perſons, ſo offending, ſhall "be held guilty of wilful murder; and on conviction, ſhall "be liable to the puniſhment of death; and all perſons, aiding "ding or abetting the commiſſion of ſuch act, ſhall be deemed "accomplices in the murder, and ſhall be ſubject to pun-"iſhment accordingly." It was further declared by Section III, of the ſame regulation, that "If a child, or any perſon "not arrived at maturity, be thrown into water, as ſtated in the "preceding ſection, and be reſcued from deſtruction, or by "any means eſcape from it, the perſons, who ſhall have been "active in expoſing him or her to danger of life, and all "aiders and abettors of ſuch act, ſhall be held guilty of a high "miſdemeanor; and on conviction, ſhall be liable to ſuch "puniſhment as the courts of circuit, under the futwah of their

Declaration made by § II, R. VI, 1802, to prevent the continuance of this practice. Subject to capital puniſhment if the infant be drowned or deſtroyed.

§ III. Or puniſhable as a high miſdemeanor, if the infant be thrown into water, and reſcued, or eſcape.

" their law officers, may judge adequate to the nature and " circumſtances of the caſe." The magiſtrates of diſtricts, wherein the ſacrifice of children had been practiced, were required by Section IV, of the regulation abovementioned, to be vigilant in preventing the continuance of the practice; and to cauſe the foregoing proviſions to be, from time to time, proclaimed at the places and periods where, or when, ſuch ſacrifices had heretofore been effected.

§ IV. Magiſtrates further required to be vigilant, in preventing a continuance of this practice.

Court of Nizamut Adawlut empowered to grant relief to priſoners confined under ſentences of the Naib Nazim, of the former criminal courts in Benares, and of the courts of circuit eſtabliſhed ſince 1790, for the payment of the price of blood, reſtoration of ſtolen property; pecuniary compenſation to individuals; or fines to government. R. XIV, 1797, §. II.

It appearing that many priſoners, convicted of crimes and miſdemeanors before the late Naib Nazim, the former criminal courts in the province of Benares, and the courts of circuit eſtabliſhed ſince the year 1790, were in confinement under ſentences for the payment of the price of blood; the reſtoration of ſtolen property, or its value; pecuniary compenſation and damages to the parties injured by them; or fines to government; and that ſuch ſentences, from inability of the priſoners to comply with the terms of them muſt, if left to take their courſe, frequently operate as judgments of impriſonment for life; or for a period greatly out of proportion to the offences committed; it was judged proper to veſt the court of Nizamut Adawlut with powers to grant relief to priſoners ſo circumſtanced. That court was accordingly authorized by Section II, Regulation XIV, 1797, to require from the ſeveral magiſtrates, reports of the caſes of all priſoners in their cuſtody, under ſentences of the nature above mentioned; and upon receiving the ſame, to grant ſuch relief to the priſoners as they ſhould conſider each caſe, in juſtice, to require. Individuals, having claims on the priſoners ſo relieved, were permitted to prefer them to the magiſtrates; who were directed to report them, with their ſentiments, for the conſideration of the Nizamut Adawlut; and the deciſion of the Governor General in Council. To prevent a recurrence of ſimilar ſentences, and alſo to mark more clearly the diſtinction between the courts of civil and criminal juriſdiction, it was fur-

Rule enacted to prevent a recurrence of ſimilar ſentences, and to mark more clearly the diſ-

ther

ther enacted by Section III, Regulation XIV, 1797, (re-enacted for the ceded provinces by the Firſt Clauſe of Section XXXIX, Regulation VII, 1803,) that " after the promulgation of this " regulation, no pecuniary compenſations, nor ſums as dama- " ges, ſhall be adjudged to, or be recoverable by individuals, " in any criminal proſecution; nor ſhall any fines be impo- " ſed by any court of criminal juriſdiction, ſave and except " to the uſe of government; and whenever a fine to the uſe " of government ſhall be impoſed, the court which may paſs " the ſentence, ſhall at the ſame time, weighing all the cir- " cumſtances of the caſe, fix a definite period of impriſon- " ment, to be held as equivalent to the fine, at the expiration " of which the perſons convicted ſhall be diſcharged, al- " though they ſhould have omitted to pay the fine. The " impriſonment awarded by the courts of circuit under this " ſection, as an equivalent for fines impoſed by them, ſhall " be temporary in all caſes, and not for life; and their ſen- " tences ſhall be executed without reference to the Nizamut " Adawlut." It was likewiſe provided by Section IV, Regulation XIV, 1797, (and by the Second Clauſe of Section XXXIX, Regulation VII, 1803, for the ceded provinces) that " whenever the law officers of the courts of circuit ſhall " declare priſoners liable to diyut, or pecuniary fines of any " kind, for any other acts than murder, and the ſeveral de- " ſcriptions of homicide ſpecified in Section III, Regulation " IV, 1797, the courts of circuit ſhall, at their diſcretion, " commute ſuch diyut, or fines, to impriſonment, for ſuch " period as they may think adequate to the offence; and " their ſentences in ſuch inſtances ſhall be carried into execu- " tion without reference to the Nizamut Adawlut, if for " temporary impriſonment; or referred to that court, if for " impriſonment for life, which ſhall at its diſcretion confirm " the ſaid ſentences, or mitigate or entirely remit the im- " priſonment awarded." Proviſion was at the ſame time made by Sections VII and VIII, Regulation XIV, 1797, (and

diſtinction between the civil and criminal courts.

R. XIV, 1797, § III, re enacted for ceded provinces by Firſt Clauſe of § XXXIX, R. VII, 1803.

No pecuniary compenſation to be adjudged to individuals, in any criminal proſecution.

And where a fine to government is impoſed, a definite period of impriſonment to be fixed as equivalent

Further proviſion made by § IV, R. XIV, 1797, and for the ceded provinces by the Second Clauſe of § XXXIX, R. VII, 1803, for commuting to impriſonment, the fines preſcribed by the Mohummudan law, in caſes not involving murder or homicide.

Explained by R. XIV, 1797, § VII, VIII; and by Third

Clauſe of § XXXIX, R. VII, 1803, for the ceded provinces, that the rules ſpecified are not meant to prohibit the reſtitution of ſtolen property, when forthcoming; nor to reſtrict the criminal courts from adjudging a re-imburſement of actual coſts, in particular inſtances.

by the Third Clauſe of Section XXXIX, Regulation VII, 1803, for the ceded provinces,) that nothing contained in the rules ſtated "ſhall be conſtrued ſo as to prohibit the reſtitution, "to the lawful owners, of ſtolen property, recovered and "produced before the magiſtrates, and courts of circuit; nor "to reſtrict the criminal courts from adjudging a re-imburſe-"ment of coſts, actually incurred upon a proſecution before "them, by either of the parties thereto, in particular in-"ſtances, wherein they ſhall conſider ſuch re-imburſement "juſt and equitable."

Perjury, ſubornation of perjury, and forgery, how puniſhable under the Mohummudan law.

Proviſion made for the puniſhment of perjury, by R. XVII, 1797, and for the ceded provinces by § XL, R. VII, 1803.

THE Mohummudan law, which has not preſcribed any fixed penalties for perjury, ſubornation of perjury, and forgery, leaves the puniſhment of theſe crimes to be inflicted at diſcretion, under its proviſions of *Tâzeer* and *Seeâſut*, by flagellation, impriſonment, and public ignominy. The prevalence of perjury in the courts of juſtice requiring that this diſcretion ſhould be uſed to the full extent authorized by the Mohummudan law, for the purpoſe of checking the commiſſion of a crime ſo dangerous and prejudicial to ſociety, the courts of circuit were authorized by Regulation XVII, 1797, and by Section XL, Regulation VII, 1803, to adjudge perſons convicted of having wilfully given falſe teſtimony on oath, or under a ſolemn obligation eſteemed equivalent to an oath, in ſome judicial proceeding, and in a matter material to the iſſue thereof, either to be publicly expoſed by *Tuſheer*, according to the opinion of ABOO HUNEEFAH, or to ſuffer corporal puniſhment and impriſonment, according to the opinion of ABOO YOOSUF and MOHUMMUD; or in caſes of enormity, to receive the aggregate puniſhment according to both opinions; and to cauſe the word *durogh-go*, or ſuch other words as in the moſt current local language might conciſely expreſs the nature of the crime, to be marked on the forehead of the convict, by a common proceſs denominated *Godna*, which leaves a blue mark that cannot be effaced with-

out

out tearing off the ſkin. Notwithſtanding theſe proviſions however, the flagrant offence of falſe teſtimony, with ſubornation of perjury, and forgery, equally injurious to the rights of individuals and to the due adminiſtration of juſtice, continued to prevail; and no ſpecific penalties having been attached to theſe crimes by the Mohummudan law, perſons convicted of them were ſentenced to various, and in ſome inſtances inadequate, puniſhment, according to the *Futwas* of the law officers. It was therefore requiſite, that further proviſion ſhould be made, to define, as far as the degrees of criminality in different caſes might admit, the ſentences to be paſſed by the courts of circuit upon perſons convicted before them of wilful perjury, ſubornation of perjury, or forgery. It was further judged expedient to declare ſuch heinous and prevalent offences not bailable, except in ſpecial caſes; and to expedite the exemplary puniſhment of perſons, who might be guilty of them before the courts of circuit, by providing for their immediate commitment and trial, when the whole of the requiſite witneſſes might be in attendance. Regulation XVII, 1797, and Section XL, Regulation VII, 1803, above-mentioned, were therefore reſcinded by Section II, Regulation II, 1807; and the following rules were enacted by Sections III, IV, V, and VI, of that regulation.

Found inadequate and reſcinded by § II, R. II, 1807.

Rules enacted by R. II, 1807, § III, IV, V, and VI, for the puniſhment of perjury, ſubornation of perjury, and forgery.

Firſt. "If any perſon amenable to the juriſdiction of a court of circuit ſhall be convicted before that court, whether by his free and voluntary confeſſion, or by the teſtimony of credible witneſſes, or by ſtrong circumſtantial evidence, of the crime of wilful perjury, or of ſubornation of perjury, or of forgery, as defined in the following ſection of this regulation; and ſhall, in conſequence, by the futwah of the Mohummudan law officers of the court of circuit, be declared liable to diſcretionary puniſhment (tazeer, acoobut, or ſeeaſut,) the judge of circuit, before whom the trial may be held, provided he concur in the conviction of the priſoner; (and ſhall

Section III. Sentence to be paſſed by the courts of circuit, on perſons convicted of wilful perjury, or of ſubornation of perjury, or of forgery.

conſider

conſider him a proper object of corporal and ignominious puniſhment) ſhall ſentence the offender to be publickly expoſed, in the mode commonly denominated tuſheer; to have the words "durogh-go, or jal-ſaz," or others, of ſimilar import, expreſſing the nature of the crime in the moſt current local language, marked on the offender's forehead, by the common proceſs of "godna;" to receive thirty ſtripes with a corah; and to be impriſoned and kept to hard labor for a period not leſs than four, and not more than ſeven years. If it appear proper to baniſh the priſoner, during the period of his confinement, from the diſtrict in which he may have reſided, he will be further liable to ſuch ſentence, in purſuance of Clauſe Third, of Section VIII, Regulation LIII, 1803. Provided however, that if the judge of circuit, on conſideration of the circumſtances of the caſe, and the priſoner's ſituation, ſhall deem the puniſhment above ſpecified too ſevere, he ſhall ſubmit the trial with his ſentiments to the Nizamut Adawlut, for the final ſentence of that court."

How to proceed if the ſtated puniſhment appear too ſevere.

Second. "If the judge of circuit differ in opinion from the law officer of the court, with reſpect to the conviction of the priſoner, he ſhall not paſs any ſentence; but ſhall tranſmit his own and the magiſtrate's proceedings, with his ſentiments in a letter to accompany them, for the ſentence of the court of Nizamut Adawlut."

Or if the judge of circuit differ in opinion from the law officer reſpecting the priſoner's conviction.

Third. "In caſes of reference to the Nizamut Adawlut, this court, after taking the futwah of its law officers, ſhall, if the priſoner be convicted, ſentence him to any puniſhment deemed proper, not exceeding that ſpecified in Clauſe Firſt, of this Section."

Court of Nizamut Adawlut how to proceed in caſes referred to it.

Firſt. "The crime of wilful perjury, ſubjecting the offender, on conviction, to the puniſhment ſtated in the foregoing ſection, is hereby declared to be, giving intentionally

Section IV. Definition of the crime of wilful perjury, puniſhable under the above rule.

and

and deliberately, before a court of judicature, magiſtrate, or other authorized public officer, a falſe depoſition, upon oath, or under a ſolemn declaration, taken inſtead of an oath, relative to ſome judicial proceeding, civil or criminal, and upon a point material to the iſſue thereof."

And of ſubornation of perjury.

Second. "SUBORNATION of perjury, puniſhable under the preceding ſection, is declared to be the crime of procuring, or cauſing, another perſon to commit the offence of perjury as above deſcribed."

To what deſcriptions of forgery the ſtated penalties are applicable.

Third. "THE penalties for forgery, ſtated in Section III, are meant to include all fraudulent and injurious fabrications, or alterations, of written deeds, or of written or printed papers, of whatever deſcription; as well as all counterfeit ſeals or ſignatures thereto; and the illicit imitation of any public ſtamp, or ſtampt paper, eſtabliſhed by Government. It is further hereby declared, that perſons convicted of procuring, or cauſing, any ſuch forgery, will be liable to the ſame puniſhment, as thoſe convicted of having actually committed the forgery, at the inſtigation of others."

Section V. In what caſes perſons charged with perjury, ſubornation of perjury, or forgery, may, or may not, be admitted to bail.

"PERSONS charged with the crime of perjury, ſubornation of perjury, or forgery, as defined in the preceding ſection, and appearing to the civil or criminal courts, by whom they may be ordered to be brought to trial before the courts of circuit, to have been guilty of the charge, ſhall not be admitted to bail, (notwithſtanding any thing declared to the contrary in any exiſting regulation) unleſs ſpecially authorized by the court under whoſe directions they are committed for trial. But nothing herein contained ſhall be conſtrued to preclude the magiſtrate from admitting to bail perſons committed by him for trial, on charges preferred originally before him, in caſes cognizable by him under the regulations, without any order from a civil or criminal court

for the commitment of ſuch perſons for trial before the court of circuit."

ection VI. In what caſes perſons guilty of perjury, ſubornation of perjury, or forgery, before a court of circuit, may be brought to immediate trial in that court.

"WHENEVER a witneſs giving evidence before a court of circuit may be conſidered by the judge of that court to be guilty of wilful perjury; or whenever a perſon attending a court of circuit may be conſidered by the judge of that court to be guilty of ſubornation of perjury, or of forgery, in any trial or matter depending before the court; and the whole of the witneſſes required for the proof of the charge, and for the defence of the accuſed, may be alſo in attendance; it ſhall be competent to the judge of circuit to direct the zillah or city magiſtrate to commit the perſon ſo charged for immediate trial before the court of circuit; inſtead of poſtponing the commitment for trial at the enſuiug ſeſſion of the court of circuit. Provided, that nothing in this ſection ſhall be conſtrued to authorize the conviction or puniſhment of any perſon, charged with the crimes ſpecified, until he ſhall have been regularly put upon his trial; or until any material evidence which he may have to offer in his defence ſhall have been received, and duly conſidered."

Proviſion m de by R. III, 1801, § II, to prevent unfounded charges of perjury, and ſubornation of perjury, by the parties in civil ſuits.

IT may be proper to notice in this place, that in conſequence of its having become a prevalent practice for parties in civil ſuits to prefer unfounded charges of perjury againſt the witneſſes of their opponents; and even againſt their own witneſſes, when their evidence does not eſtabliſh every point they were brought to prove; as well as ſimilar charges of ſubornation of perjury againſt the adverſe parties in ſuch ſuits; it was deemed adviſable, as the only effectual remedy for this abuſe, (which, if not checked, might deter all men of reſpectability from appearing to give their teſtimony, on oath, in a court of juſtice,) to take away from parties in civil ſuits the right of bringing forward ſuch accuſations; and to leave it at the diſcretion of the judge, under the authority

veſted

veſted in him to commit for trial before the court of circuit any perſon guilty of wilful and corrupt perjury in any cauſe or matter depending in a civil court, to make ſuch commitments, when he might ſee grounds for them. It was accordingly declared by Section II, Regulation III, 1801, for the provinces of Bengal, Behar, Oriſſa and Benares, (but this proviſion does not appear to have been included in the Regulations for the ceded provinces) "that the magiſtrates of "the ſeveral zillah and city courts ſhall not receive any "charges of perjury, which may be preferred by parties in "civil ſuits, either againſt their own witneſſes, or againſt the "witneſſes of the adverſe party, or of ſubornation of per-"jury againſt the adverſe parties in ſuch ſuits; and all indi-"viduals whoſe attendance is required in the civil courts, "either as plaintiffs, defendants, or witneſſes, are hereby de-"clared not to be liable to any proſecutions of this deſcrip-"tion, unleſs they ſhall be committed to take their trial by "the zillah or city judge, under the authority veſted in him "by Section XIV, Regulation IV, 1793."

Parties and witneſſes in the civil courts declared not liable to proſecution for perjury, or ſubornation of perjury, unleſs committed by the judge of the civil court.

The rules eſtabliſhed by Regulations IV, 1799, and XXVIII, 1803, for the trial of perſons charged with crimes againſt the State, will be more properly included in the next ſection of this Analyſis. But as Regulation X, 1804, "for declaring the powers of the Governor General in Council to provide for the immediate puniſhment of certain offences againſt the State by the ſentence of courts martial, involves a material alteration in the proviſions of the Mohummudan law for *Bughâwut*, or rebellion, as well as a temporary ſuperſeſſion of the ordinary criminal courts, by the eſtabliſhment of martial law, during the exiſtence of war, or open rebellion, in any part of the Britiſh territories; it is here introduced at length; with the preamble, which ſtates the grounds and objects of it.

Proviſions made by R. X, 1804, for the immediate puniſhment of offences againſt the ſtate, in certain caſes, by the ſentence of courts martial.

"Whereas

Preamble to the regulation, ſtating the grounds and objects of it.

" WHEREAS during wars in which the Britiſh Government has been engaged againſt certain of the native powers of India, certain perſons, owing allegiance to the Britiſh Government, have borne arms, in open hoſtility to the authority of the ſame, and have abetted and aided the enemy and have committed acts of violence and outrage againſt the lives and properties of the ſubjects of the ſaid Government; and whereas it may be expedient that, during the exiſtence of any war in which the Britiſh Government in India may be engaged with any power whatever, as well as during the exiſtence of open rebellion againſt the authority of the Government, in any part of the Britiſh territories ſubject to the Government of the Preſidency of Fort William, the Governor General in Council ſhould declare and eſtabliſh martial law, within any part of the territories aforeſaid, for the ſafety of the Britiſh poſſeſſions, and for the ſecurity of the lives and property of the inhabitants thereof, by the immediate puniſhment of perſons owing allegiance to the Britiſh Government, who may be taken in arms, in open hoſtility to the ſaid Government, or in the actual commiſſion of any overt act of rebellion againſt the authority of the ſame, or in the act of openly aiding and abetting the enemies of the Britiſh Government, within any part of the territories above ſpecified; the following regulation has been enacted by the Governor General in Council, to be in force, throughout the Britiſh territories immediately ſubject to the Government of the Preſidency of Fort William, from the date of its promulgation."

Section II. By whom, and under what circumſtances, the functions of the ordinary criminal courts may be ſuſpended; and martial law eſtabliſhed.

" THE Governor General in Council is hereby declared to be empowered to ſuſpend, or to direct any public authority, or officer, to order the ſuſpenſion of, wholly or partially, the functions of the ordinary criminal courts of judicature, within any zillah, diſtrict, city, or other place, within any part of the Britiſh territories, ſubject to the Government of the Preſidency of Fort William, and to eſtabliſh martial law therein,

therein, for any period of time, while the Britiſh Government in India ſhall be engaged in war with any native or other power; as well as during the exiſtence of open rebellion againſt the authority of the Government, in any part of the territories aforeſaid; and alſo to direct the immediate trial, by courts martial, of all perſons owing allegiance to the Britiſh Government, either in conſequence of their having been born, or of their being reſident, within its territories, and under its protection, who ſhall be taken in arms, in open hoſtility to the Britiſh Government, or in the act of oppoſing by force of arms the authority of the ſame, or in the actual commiſſion of any overt act of rebellion againſt the ſtate, or in the act of openly aiding and abetting the enemies of the Britiſh Government, within any part of the ſaid territories."

What perſons liable to immediate trial, by courts martial, ſo eſtabliſhed; and for what offences.

" It is hereby further declared, that any perſon born, or " reſiding, under the protection of the Britiſh Government, " within the territories aforeſaid, and conſequently owing alle- " giance to the ſaid government, who, in violation of the " obligations of ſuch allegiance, ſhall be guilty of any of the " crimes ſpecified in the preceding ſection, and who ſhall " be convicted thereof, by the ſentence of a court marital, " during the ſuſpenſion of the functions of the ordinary cri- " minal courts of judicature and the eſtabliſhment of mar- " tial law, ſhall be liable to the immediate puniſhment of " death, and ſhall ſuffer the ſame accordingly, by being " hung by the neck till he is dead. All perſons who ſhall, " in ſuch caſes, be adjudged, by a court martial, to be guilty " of any of the crimes ſpecified in this regulation, ſhall alſo " forfeit to the Britiſh Government all property and effects, " real and perſonal, which they ſhall have poſſeſſed within " its territories, at the time when the crime, of which they " may be convicted, ſhall have been committed."

Perſons owing allegiance to the Britiſh Government and convicted of any of the crimes ſpecified, viz. open hoſtility to the Britiſh Government, or oppoſing it's authority by force of arms, or the actual commiſſion of any overt act of rebellion againſt the State, or openly aiding and abetting the enemies of the Britiſh Government within its territories, declared liable to immediate puniſhment of death.

Alſo to forfeiture of all property, real and perſonal, poſſeſſed within the Britiſh territories when the crime was committed.

" The Goveronor General in Council ſhall not be pre-

" cluded,

Section IV. But the Governor General in Council may cauſe

Persons charged with any of the crimes specified to be tried before the ordinary courts, or before a special court, if the immediate trial by court martial shall not appear necessary.

" cluded, by this regulation, from causing persons charg-
" ed with any of the offences described in the present regu-
" lation, to be brought to trial, at any time, before the
" the ordinary courts of judicature, or before any special
" court appointed for the trial of such offences, under Regu-
" lation IV, 1799, and Regulation XX, 1803, instead of causing
" such persons to be tried by courts martial, in any cases
" wherein the latter mode of trial shall not appear to be indis-
" pensably necessary."*

By

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* The following circular instructions to the magistrates of the ceded and conquered provinces, for their guidance when martial law might be proclaimed under the above Regulation, were transmitted by order of Government, in a letter from the Chief Secretary, dated the 11th April 1805.

" You have already been furnished with Regulation X, of 1804, which provides for the
" eventual establishment of martial law under the circumstances therein described, within any
" part of the British territories subject to the immediate authority of this Government. I am
" now commanded by His Excellency the Most Noble the Governor General in Council to
" communicate to you the following special orders for the regulation of your conduct in the
" event of its being at any time considered to be necessary, or proper, to proclaim martial
" law in the district under your authority. Whenever martial law shall be proclaimed, you
" will direct all officers in command of troops, which shall be employed within your juris-
" diction, to act under the proclamation, until it shall be recalled; leaving it to the discretion
" of such officers to confine the operation of the proclamation to the principal person, or
" persons, concerned in any of the acts of rebellion described in the regulation, or to extend
" it to their principal adherents and followers, as the exigency of the case may require. If
" any person or persons, charged with any of the overt acts of rebellion specified in Regulation
" X, of 1804, shall be apprehended by any military officer, when not in the actual com-
" mission of offences of that description, they are to be delivered over by the military to the
" civil power; and you are required to commit such persons to close custody; and to adopt the
" necessary measures for bringing them to trial on a charge of high treason. In cases of such
" commitment you will communicate the circumstances, without delay, to the court of circuit
" for the division of Bareilly, with intimation when the trial may come on; in order that the
" court may depute two of its members to your station for the trial of the prisoners, in
" virtue of powers vested in them to that effect under Regulation XX, of 1803. You
" are commanded to attach all property, whether real or personal, which shall be situated
" within your jurisdiction, belonging to any person or persons who may be guilty of overt
" acts of rebellion against the authority of Government; and to continue such property under
" attachment until the pleasure of the Governor General in Council on the occasion shall be
" known. Whenever you shall attach landed estates in virtue of the present order, you will
" place the same under the management of the collector of the district; with instructions to
" adopt the proper measures for realizing the revenues of such estates. Should the property
" of the rebels be situated in any other district, you will make the necessary communication to
" the judge and magistrate of such district, requiring him at the same time to attach the pro-
" perty in question, and to continue the same under attachment until he shall be furnished with
" the orders of government for his further guidance in the disposal of the property.

" If

By Section X, Regulation IV, 1797, the Nizamut Adawlut were authorized, under the diſcretion allowed by the Mohummudan law. to order any priſoners, ſentenced to impriſonment for life, or for a limited period of ſeven years or upwards, to be tranſported to ſome place beyond ſea. And by Section V, Regulation II, 1799 (correſponding with Section XXII, Regulation VIII, 1803, for the ceded provinces) any convicts ſentenced to impriſonment by the Courts of circuit or Nizamut Adawlut, who, during the period of their ſentences, might eſcape, and be re-apprehended, were declared liable to tranſportation by order of the Nizamut Adawlut; either during the remaining period of their ſentences, or for a longer period if the Nizamut Adawlut ſhould, on conſideration of the circumſtances of the caſe, judge it proper to direct the ſame. But theſe rules were found open to objection, with reſpect to convicts ſentenced to ſhort periods of impriſonment, from difficulties attending their return to Bengal, from the place of tranſportation, after the expiration of their ſentences; and it was therefore judged adviſable that none, except perſons convicted of heinous offences, and ſentenced to be impriſoned for life, ſhould be tranſported in future beyond ſea; ſubſtituting baniſhment from the diſtrict in which the offender's place of abode may be ſituated, with hard labor on the public roads, or other public works, for convicts ſentenced to limited impriſonment, who may be deemed proper objects of this mode of puniſhment. The following rules were accordingly enacted, by Section VIII, Regulation LIII, 1803.

Former rules for tranſportation of convicts ſentenced to imprisonment for ſeven years or upwards; or who might eſcape during the period of their ſentences, and be re apprehended found open to objection.

Tranſportation in conſequence, reſtricted to perſons convicted of heinous offences, and ſentenced to be impriſoned for life.

Baniſhment from the diſtrict in which the offender's place of abode is ſituated, with hard labor, ſubſtituted for convicts ſentenced to limited impriſonment and deemed proper objects of this mode of puniſhment.

"If any property, of perſons charged with acts of rebellion againſt the State, ſhall be attached "by any military officers employed in the diſtrict under your authority, ſuch property "is to be delivered over to your charge; whether the owners ſhall have been taken in arms "or otherwiſe; and to be retained under attachment, until you ſhall have received the orders "of government for its diſpoſal. The Right Honorable the Commander in Chief will be "requeſted to make theſe rules known to all military officers employed in the command of "detachments within the limits of the ceded and conquered provinces, and to enjoin a ſtrict "adherence to them in all caſes to which they may be applicable."

Firſt.

Rules for theſe purpoſes enacted by R. I. III, 1803, §. VIII.

Firſt. "So much of Section X, Regulation IV, 1797, as authorizes the tranſportation, to ſome place beyond ſea, of convicts ſentenced to be confined for a term of ſeven years; or for any limited term of years; and directs a reference from the Courts of circuit to the Nizamut Adawlut in all inſtances wherein they ſhall conſider offenders convicted before them to be proper objects of tranſportation; is hereby reſcinded."

Second. "TRANSPORTATION beyond ſea ſhall be hereafter reſtricted to convicts who may be ſentenced to confinement for life; and in all inſtances wherein a ſentence of confinement for life may be paſſed againſt a priſoner, whether by the Courts of circuit in the firſt inſtance, or finally by the court of Nizamut Adawlut, the court paſſing ſuch ſentence, if it deem the priſoner a proper object of tranſportation beyond ſea, ſhall at the ſame time adjudge him, or her, to be tranſported for life."

Third. "IN the caſes of convicts ſentenced to confinement for life, whom the Courts of circuit and Nizamut Adawlut may not conſider proper objects of tranſportation beyond ſea, under the preceding clauſe; as well as in all caſes of convicts ſentenced to impriſonment for a limited period; the court by whom the ſentence is paſſed, if it deem the ſame proper, on conſideration of the priſoner's offence, may adjudge him to be baniſhed, during the period of his ſentence, from the diſtrict in which his place of abode is ſituated; and to be kept to hard labor on the public roads, or other public works, in any other diſtrict, to which he may be removed by order of the Nizamut Adawlut."

Fourth. "The magiſtrates of the ſeveral zillahs, at the cloſe of the half yearly jail-delivery of their reſpective diſtricts, and the magiſtrates of the ſeveral cities, on the 1ſt

January

January and 1ſt July of each year, or at any other period when the ſame may be required by the Nizamut Adawlut, ſhall tranſmit to that court a liſt of the convicts in their reſpective jails who may have been ſentenced to tranſportation beyond ſea, or to baniſhment from the diſtrict in which the offenders may have reſided, under each of the two preceding clauſes; ſpecifying in ſuch liſts the names, ages, crimes, and ſentences of the ſeveral convicts; and in the liſt of thoſe ſentenced to baniſhment, the diſtrict in which they may have uſually reſided before they were brought to trial."

Fifth. "THE court of Nizamut Adawlut, after receiving the liſts required by the foregoing clauſe, will iſſue the neceſſary directions for conveying to the jail of the 24-Pergunnahs the convicts ſentenced to tranſportation beyond ſea, when the ſtate of that jail may admit of their being received; or an opportunity may offer for tranſporting them; and will alſo give the requiſite inſtructions concerning the removal of the convicts under a ſentence of baniſhment. The court of Nizamut Adawlut is further declared competent, as heretofore, under the diſcretion allowed by the Mahomedan law, to order the removal of all convicts, under ſentence of imprifonment, to any jail or diſtrict, within the Company's poſſeſſions, in which it may be thought proper to keep or employ them, during the period of their reſpective ſentences, although no ſpecific ſentence of baniſhment may have been paſſed againſt them under Clauſe Third, of this ſection. But no ſuch removal ſhall take place without the ſpecial order of the court of Nizamut Adawlut."

Court of Nizamut Adawlut may order the removal of all convicts under ſentence of imprifonment, to any jail, or diſtrict, within the Company's poſſeſſions.

THE following rules were alſo enacted by Section IX, of the regulation laſt mentioned, for the puniſhment of convicts who may effect their eſcape during the period of their ſentences; or, if tranſported, may return without permiſſion from the

Rules enacted by § IX, R. LIII, 1803, for the puniſhment of convicts who may effect their eſcape during the period of their ſentences.

 place

or, if tranſported, may return, without permiſſion, to any part of the Company's territory under the Bengal Preſidency.

place of their tranſportation to any parts of the Company's territory under the Preſidency of Bengal.

Firſt. "SECTION V, Regulation II, 1799, and Section XXII, Regulation VIII, 1803, are hereby reſcinded. Any convicts ſentenced to impriſonment by the courts of circuit, or by the court of Nizamut Adawlut, who, during the period of their ſentences, may eſcape from jail, or other place of confinement; or from the roads, or any other place where they may be employed; and who may be re-apprehended; ſhall be brought to trial before the courts of circuit for ſuch eſcape; as well as for any acts of violence, or aggravating circumſtances, attending their eſcape; or for any violent acts done in an attempt to eſcape; and, on conviction, they ſhall be liable to ſuch further puniſhment, in addition to their former ſentences, as may be adjudged againſt them, on conſideration of the circumſtances of the caſe, under the proviſions contained in this regulation."

Second. "ANY convict, under ſentence of tranſportation for life, who may be tranſported to any place beyond ſea, after the promulgation of this regulation, and ſhall eſcape from ſuch place of tranſportation, and return, without permiſſion, to Bengal, or to any part of the Company's territory under the Preſidency of Bengal, ſhall, on conviction thereof, to the ſatisfaction of the Nizamut Adawlut, and if no circumſtances appear to that court to render ſuch convict an object of mercy, be adjudged to ſuffer death."

Concluding remark.

THE foregoing are the whole of the modifications of, or additions to, the Mohummudan criminal law, made by the exiſting Regulations of the Britiſh Government, which it appears requiſite to ſpecify in this Section. But it may be proper to add that, under the proviſions of Regulation LI, 1803, relative to trials depending in the ceded provinces when the

Proviſions in R. II, 1803, R. IX, and IV, 1804, to prevent any retroſpective operation of the modifications.

regulation

regulations for criminal juſtice, paſſed on the 24th March 1803, were ordered to take effect; in thoſe provinces; the proviſions of Regulation IX, 1804, for the adminiſtration of criminal juſtice in the conquered provinces of the Doab, and on the right bank of river Jumna, as well as in the ceded territory of Bundelcund; and the proviſions of Regulation IV, 1804, for the adminiſtration of juſtice, in criminal caſes in Cuttack; the courts of judicature were reſtricted from giving any retroſpective operation to the ſtated modifications of the Mohummudan law in thoſe territories reſpectively; excepting ſuch, as direct a commutation of the puniſhment of amputation to impriſonment; or otherwiſe have an operation favorable to the priſoner. It was, in like manner, provided by Regulation XVI, 1805, which, in conſequence of the continuance of hoſtilities between Great Britain, France, and Holland; and of the incompetence of the courts eſtabliſhed at Chandernagore and Chinſurah, to inflict capital puniſhment; extended the juriſdiction of the court of circuit for the diviſion of Calcutta, and of the court of Nizamut Adawlut, over thoſe ſettlements; together with the rules in force for the adminiſtration of criminal juſtice in the provinces of Bengal, Bahar, and Oriſſa; that no part of the exiſting regulations, whereby the puniſhment of any offence is enhanced beyond the puniſhment of ſuch offence preſcribed by the Mohummudan law, ſhould be conſidered applicable to any crime committed within the ſettlements of Chandernagore or Chinſurah, before the promulgation of this regulation. In ſuch caſes, it is directed, that "the court of circuit and Nizamut Adawlut ſhall be guided by the Mahomedan law, as declared by the futwas of their law officers; and by ſuch modifications of it, in favor of the priſoner, as have been made by any regulation in force; except that the will of the heir of the ſlain ſhall not be allowed to operate in caſes of murder." It is further provided that "if the offender be an European, or the deſcendant of an European, and be a ſettled inhabitant

ons ſpecified in the ceded and conquered provinces (including Cuttack) excepting ſuch as have an operation favorable to the priſoner.

Similar proviſion made by R. XVI, 1805, for the ſettlements of Chandernagore and Chinſurah. § III, clauſes firſt, and ſecond.

Clauſe Third.

Clauſe Fourth.

inhabitant of Chandernagore or Chinſurah, and the puniſhment of the offence, under the Mahomedan law, and the proviſions of this regulation, would be more ſevere than the puniſhment of the ſame offence under the law in uſe, when the ſettlement, in which it may be committed, came into the poſſeſſion of the Britiſh Government, the puniſhment, to be adjudged againſt the priſoner, ſhall be regulated by the law which was in uſe when the ſettlement, wherein the offence ſhall have been committed, came into the poſſeſſion of the Britiſh Government."

SECTION III.

MAGISTRATES AND CRIMINAL COURTS.

Alteration in the number of zillah and city courts ſince the Firſt Part of this Analyſis was printed.

OF the forty zillah and four city courts, of civil judicature, mentioned in the firſt part of this Analyſis;* three have been ſince diſcontinued; viz. one in Cuttack, by Section II, Regulation XIII, 1805; which directs that the diſtricts compriſed in that province, excepting three pergunnahs annexed to zillah Midnapore, ſhall form one zillah, inſtead of two, as preſcribed by Regulation IV, 1804; another in zillah Moorſhedabad, by Section II, Regulation I, 1806; in purſuance of which the mehals compriſing that zillah have been transferred to the juriſdiction of the city of Moorſhedabad, and zillah Beerbhoom; and a third in Seharunpore, by Regulation XIV, 1806; which provides that the civil juriſdiction of the Northern diviſion of that diſtrict ſhall be incorporated with the civil juriſdiction of the Southern juriſdiction; but that the criminal juriſdiction of the Northern diviſion ſhall continue ſeparate; until the abolition of it appear adviſable to Government. Moreover, the revenue of the territory in the intended zillah of Paniput, compriſing the city of Delhi, and its vicinity on the right bank of the Jumna, having been aſſigned to the late King Shâh Ââlum, this territory was declared by Section IV, Regulation VIII, 1805, not ſubject to

* Page 45.

any of the laws or regulations of the Britiſh Government. But the civil court of the 24-Pergunnahs near Calcutta, before noticed as aboliſhed, has been re-eſtabliſhed by Regulation VII, 1806; and a new civil and criminal juriſdiction has been conſtituted, under Regulation XVIII, 1805, for certain diſtricts, called the Jungle Mehals, or Foreſt lands,* ſituated in the former zillahs of Beerbhoom, Burdwan, and Midnapore.

Preſent number of zillah and city juriſdictions, civil and criminal.

The preſent number of zillah and city juriſdictions therefore is forty-two; or forty-three, including the criminal juriſdiction of the Northern diviſion of Scharunpore; excluſive of the foreign Settlements of Chandernagore, Chinſurah, and Serampore,† which may be conſidered to conſtitute three ſeparate juriſdictions; and will be ſpoken of diſtinctly, as the ſpecial proviſions made for the temporary adminiſtration of juſtice in theſe ſettlements, differ, in ſome reſpects, from the proviſions contained in the general regulations.

What perſons veſted with the office of magiſtrate in the ſeveral zillahs and cities.

In the four cities of Dacca, Moorſhedabad, Patna, and Benares; and in the thirty-nine zillahs, which compoſe the reſidue of the provinces ſubject to the preſidency of Fort William, (except the Northern diviſion of Scharunpore, in which there is a ſeparate magiſtrate, as already noticed; and the 24-Pergunnahs, with parts of the adjacent diſtricts ſituated within the diſtance of about twenty miles from Calcutta, in which it has been judged expedient, with a view to improve the police of the town and ſuburbs of Calcutta, that the juſtices of the peace for the town ſhall exerciſe the powers and perform the duties of magiſtrate;) the judges of the Dewanny Adawlut, or civil court, are veſted with the office of magiſtrate in their reſpective juriſdictions. But previouſly to entering upon the execution of the duties of his office, the magiſ-

R. VII, 1806, preamble, and § VII.

R. IX, 1793, § II, III.
R. R. II, 1795, § II, III.
C. P. R. VI, 1803, § II, III.

* See First Part of this Analyſis, p. 196, and Note.

† Since the preceding ſection was written, a regulation has been enacted, to provide for the adminiſtration of civil and criminal juſtice in the ſettlement of Serampore, in conſequence of its recent capture by the Britiſh arms.

trate is required to take and ſubſcribe, before the Governor General in Council, or ſuch perſons as he may commiſſion to adminiſter it, an oath, declaring that he will, to the beſt of his ability, preſerve the peace of the zillah or city over which his authority extends; that he will act with impartiality and integrity; and will not exact or receive, nor knowingly allow any other perſon to exact or receive, any fee, reward, or emolument whatſoever, except ſuch as is expreſsly authorized by Government. Alſo, that he will perform the duties of his office to the beſt of his knowledge, abilities, and judgment, in conformity with the regulations that have been, or may be, paſſed by the Governor General in Council.

Oath to be taken by the magiſtrates.

ALL natives of the country, and all other perſons, not being European Britiſh ſubjects, are amenable to the authority of the magiſtrate in whoſe juriſdiction they reſide, or may be found when a criminal charge is preferred againſt them; or in which a crime or miſdemeanor may be committed by them.* Natives reſiding within the town of Calcutta, or committing, within the local juriſdiction of the Supreme Court of Judicature, offences excluſively cognizable by that court, are not, of courſe, included in the rule cited. European Britiſh ſubjects (viz. natives of Great Britain and their deſcendants) are alſo expreſsly declared amenable only to the Supreme Court of Judicature at Calcutta, for all acts of a criminal nature; and in the event of any charges being preferred againſt them to a zillah or city magiſtrate, which may render them liable to a criminal proſecution, the following proceſs is ordered to be obſerved.

R. IX, 1793, § XIX, extended to Benares by § IV. B. R. XVI, 1795, R. II, 1796, § II. C. P. R. VI, 1803, § XIX.

What perſons amenable to the authority of the zillah and city magiſtrates.

R. XXII, 1793, § XVI. B. R. XVII, 1795, § XV. C. P. R. XXXV, 1803, § XVI.

What perſons amenable only to the Supreme Court of Judicature at Calcutta; and proceſs to be obſerved by zillah or city magiſtrates, on criminal charges againſt European Britiſh ſubjects.

R. II, 1796, § II, III, IV, re-enacted for ceded provinces in § XIX. C. P. R. VI, 1803; and amended by R. XV, 1806.

* The *Nuwáb* of FURRUKHABAD muſt be conſidered an exception to the general rule ſtated, under the treaty cited in P. 49, of the Firſt Part of this Analyſis. The *Nazim* of Bengal, and the principal members of his family, are alſo excepted from the ordinary proceſs of the magiſtrate by the proviſions of Regulations XIX, 1805, and XVI, 1806, which direct, that all references and applications to the Nuwab, or other perſons therein ſpecified, be addreſſed in a perſcribed form, and forwarded through the ſuperintendent of Nizamut affairs; who is authorized, if the reference or application appear objectionable, either from its tenor or form, to delay the communication of it, and report the circumſtances of the caſe for the orders of the Governor General in Council.

Magiſtrate how to proceed if he has taken the oaths of qualification as a juſtice of the peace.

Firſt. If the magiſtrate, to whom the charge is preferred, ſhall have taken the oaths of qualification as a juſtice of the peace, and thereby have become veſted with the authority of a juſtice of the peace, as provided by Act of Parliament,* the magiſtrate, on the charge or information being lodged before him upon oath, is to apprehend the party accuſed; and, if the evidence againſt him be ſufficient to warrant the ſame, is to hold him to bail, or commit him to the cuſtody of the Sheriff of Calcutta, for trial before the Supreme Court, at the enſuing ſeſſion. He is, at the ſame time, to bind over the proſecutor to repair to Calcutta before the next ſeſſion, and to take recognizances from the witneſſes for their appearance at the trial. He is further required to tranſmit the original depoſitions taken on the occaſion, (with tranſlations of any papers not in the Engliſh language,) to the Clerk of the Crown: and to ſend copies thereof to the Secretary to Government in the Judicial Department, for the information of the Governor General in Council; who, if he conſider it neceſſary, from the aggravated nature of the offence, or any other ſubſtantial ground, will order the proſecution to be conducted by the law officers of government, and at the public expence.

R. XV, 1806, § III. What to be done, if the magiſtrate is not qualified to act as a juſtice of the peace, and the offence charged be not bailable.

Secondly. Whenever an European Britiſh ſubject ſhall be charged before a zillah or city magiſtrate, who has not taken the oaths of qualification as a juſtice of the peace, with a criminal offence, which, according to the law of England, may not be bailable; and the magiſtrate, after making the neceſſary inquiry on the ſubject, ſhall be of opinion, that there are

* The Act, which empowers the Governor General in Council, by Commiſſions under the Seal of the Supreme Court of Judicature, teſted in the name of the Chief Juſtice, to appoint Covenanted Servants of the Company, or other Britiſh Inhabitants, whom he may think properly qualified, to act as Juſtices of the Peace, and veſts the perſons ſo appointed, after taking the preſcribed oaths before the Court of Oyer and Terminer at Calcutta, with full power and authority to act as Juſtices of the Peace, according to the tenor of their commiſſions, in and for the places therein ſpecified, is erroneouſly cited in the Preamble to Regulation II, 1796, as the Act of 21, Geo. III, Cap. 65, inſtead of 33, Geo. III, Cap. 52. See 151, 152.

grounds

grounds for bringing the perſon accuſed to trial before the Supreme Court of Judicature, he is to ſend the perſon accuſed, under ſafe cuſtody, to His Majeſty's juſtices of the peace, at the police office in Calcutta, accompanied by the witneſſes againſt the priſoner; with a letter, ſtating the nature of the caſe, and requeſting that the juſtices of Calcutta will take the neceſſary meaſures for bringing the perſon accuſed to trial before the Supreme Court of Judicature. The magiſtrate, by whom the priſoner may be ſent to Calcutta, is, at the ſame time, to tranſmit a copy of all the proceedings held on the occaſion, (together with tranſlations of any papers not in the Engliſh language) to the ſecretary to government in the judicial department, to enable the Governor General in Council to determine, whether the proſecution ſhould be undertaken by the law officers of government, and at the public expenſe, or otherwiſe.

Thirdly. WHENEVER any perſon ſhall charge an European Britiſh ſubject before a magiſtrate, who has not taken the oaths of qualification as a juſtice of the peace, with a bailable offence, it is declared to be the duty of the magiſtrate to explain to the complainant the courſe which he ſhould purſue, for the purpoſe of obtaining redreſs; that is, by application to the juſtices of the peace at Calcutta, or to the grand jury. It is likewiſe required of the magiſtrate, after calling upon the perſon accuſed for his reply to the complaint, to report the caſe to the Governor General in Council; at the ſame time ſtating, on a conſideration of the diſtance at which the parties may reſide from the preſidency, of the poverty of the complainant or of other circumſtances, whether it would, in the opinion of the magiſtrate, be proper, that the expenſe of the proſecution ſhould be defrayed by government. The Governor General in Council, on receipt of ſuch report, will paſs ſuch orders on the ſubject as may appear to him to be adviſable; and will direct, in caſes which may appear to require it, that

R. XV, 1806, §. V. Magiſtrates not qualified to act as juſtices of the peace, how to act if the offence charged to bailable.

the profecution ſhall be conducted by the law officers of the Company.

R. II, 1796, §. III, C. P. R. VI, 1803, §. XIX, C. 4. Allowance to indigent profecutors and witneſſes unable to pay the charge of their journey to Calcutta.

Fourthly. In all caſes of inability, of the profecutor or witneſſes, to defray the charge of the journey to Calcutta, the magiſtrate is authorized to make them the ſame allowance as he is authorized to make to profecutors and witneſſes in need of ſuch aſſiſtance during their attendance on the courts of circuit, viz. a daily allowance of two annas each during their attendance on the Supreme Court, including the actual period of their journey to and from Calcutta; or ſufficient time for their return after their diſcharge from the court in caſes wherein it may appear they have voluntarily protracted their return beyond what was neceſſary.

Remark on above proviſions.

By the proviſions above ſtated every practicable facility is given to obviate, as far as circumſtances admit, the ill conſequences reſulting from Britiſh ſubjects, however remotely ſituated, being amenable only, for criminal offences, to the Supreme Court in Calcutta. And as leſs inconvenience is ſuſtained by profecutors and witneſſes, when the magiſtrate is empowered to act as juſtice of the peace, all perſons appointed to the ſtation of zillah or city magiſtrate are required to take the oath of qualification, within ſix months from the date of their appointment. In particular caſes the court of Nizamut Adawlut may grant an extenſion of time not exceeding a further period of ſix months. But no magiſtrate is to defer taking the preſcribed oath, beyond a twelve month from the date of his appointment, without the ſanction of the Governor General in Council.

R. II, 1796, §. VI, C. P. R. VI, 1803, §. XIX, C. 5. Magiſtrates required to take oath of qualification as juſtices of the peace, within ſix months after their appointment.

What offences are cognizable by the zillah and city magiſtrates, and in what caſes they are authorized to paſs ſentence

"It is declared to be the general duty of the magiſtrate "to "apprehend murderers, robbers, thieves, houſe-breakers, all "diſturbers of the peace, and perſons charged before him "with crimes or miſdemeanors." And in the following caſes

the

the magiſtrates are authorized to paſs ſentence, without reference to the courts of circuit or Nizamut Adawlut; though ſubject to the reviſion and controul of thoſe courts in particular inſtances which may appear to require it. By Section VIII, Regulation IX, 1793, extended to Benares by Section IV, Regulation XVI, 1795, and re-enacted for the ceded provinces by Regulation VI, 1803, Section VI I, the magiſtrates were empowered "to hear and determine, without any reference to the courts of circuit, all complaints or proſecutions brought before them, for petty offences; ſuch as abuſive language, calumny, inconſiderable aſſaults, or affrays; and to puniſh the offender, when convicted, by committing him to priſon for a term not exceeding fifteen days, or by impoſing a fine upon him; but the fine in no caſe to exceed the ſum of fifty ſicca rupees, unleſs the offender be a zemindar, independent talookdar, or other actual proprietor of land, paying an annual revenue to government of more than ten thouſand ſicca rupees; or a proprietor of ayma land paying a quit revenue to government exceeding five hundred ſicca rupees per annum; or of lakheraj land the annual produce of which may be above one thouſand ſicca rupees; in which caſes the offender is liable to a fine not exceeding two hundred ſicca rupees. The magiſtrate is to fix the amount of the fine under the limitations preſcribed upon a due conſideration of the nature of the caſe, and the ſituation and circumſtances in life of the offender." The magiſtrates were likewiſe authorized "to hear and determine, without any reference to the courts of circuit, all complaints or proſecutions brought before them for petty theſts, when they ſhall not have been attended with any aggravating circumſtances, or committed by perſons of notorious bad character; and to inflict upon the offenders corporal puniſhment not exceeding thirty rattans, or commit them to priſon for a term not longer than one month; according as they may think proper, upon a conſideation of the the circumſtances of the caſe." If the complaints ſpecified

without reference to the courts of circuit, or Nizamut Adawlut.

R. IX, 1793, §. IV, extended to Benares by §. IV, B. R. XVI, 1795, re-enacted for ceded provinces by §. IV, C. P. R. VI. 1803.

R. IX, 1793, §. VIII, C. P. R. VI, 1803, §. VIII. Petty offences which may be tried by the magiſtrates and how puniſhable.

R. IX, 1793, §. IX, C. P. R. VI, 1803, §. IX. What charges of theft may be tried by magiſtrates, and how puniſhed.

R. IX, 1793, §. X.

appear

C. P. R. VI, 1803, §. X. Groundleſs and vexatious charges how puniſhable by the magiſtrate.

appear to the magiſtrate, on inveſtigation, to be litigious, vexatious, or groundleſs, he is further authorized to puniſh the complainant, by fine, or impriſonment, under the limitations preſcribed for the puniſhment of the petty offences firſt ſtated. * With a view to the ſpeedy trial of perſons charged with offences, not of a heinous nature, and to prevent the neceſſity of a ſecond attendance of the proſecutors and witneſſes in ſuch caſes, before the courts of circuit, the powers originally veſted in the magiſtrates, as above ſtated, have been enlarged by Section XIX, Regulation IX, 1807; whereby they are empowered "in all caſes of conviction before them, of any criminal offence puniſhable under the Mahomedan law, and the regulations, for which the penalties authorized by the ſections above quoted may appear inſufficient, or to which the rules referred to may not be expreſsly applicable, and for which a more ſevere puniſhment than ſix months impriſonment, with thirty rattans, or a fine of two hundred rupees, may not have been ſpecifically preſcribed, (in which caſe the priſoner, if there appear grounds for it, muſt be brought to trial before the court of circuit) to paſs ſentence of impriſonment, not exceeding ſix months; with corporal puniſhment, not exceeding thirty rattans, in caſes of theft; or in other caſes with a fine, not exceeding two hundred rupees, commutable, if not paid, to a further period of impriſonment, not exceeding ſix months, in purſuance of Section III, Regulation XIV, 1797, and Section XXXI, Regulation VI, 1803; ſo that the entire period of impriſonment, under the ſentence of a magiſtrate, ſhall, in no inſtance, exceed one year." The two ſections here cited, in purſuance of the general rule for the guidance of the criminal courts

R. IX, 1807, § XIX. Extended power of the magiſtrates for the ſpeedy trial and puniſhment of certain offences.

R. XIV, 1797, § III, and V. C. P. R. VI, 1803, § VI. General rule with reſpect to fines impoſed by the magiſtrate.

* This rule is ordered to be ſtrictly enforced againſt under-tenants lodging unfounded and litigious complaints againſt perſons employed in collecting the rents payable by them, and attaching their property for arrears of rent. Regulation VII, 1799, Section XII, re-enacted for Benares by Section XII, Regulation V, 1800.

before

before noticed, (in page 409,) direct that no fines be impoſed by a magiſtrate, except for the uſe of government, and that whenever any ſuch fine be impoſed, the magiſtrate, weighing all the circumſtances of the caſe, ſhall fix a definite period of impriſonment, to be held as equivalent to the fine; at the expiration of which, the priſoner ſhall be diſcharged, although he may not have paid the fine.

What proceſs to be iſſued, on charges preferred to the magiſtrates. R. IX, 1793, § V. C. P. R. VI, 1803, § V. Rules in force, before the enaction of R. IX, 1807.

By the original rules for the guidance of the magiſtrates, contained in Regulation IX, 1793, extended to Benares by Regulation XVI, 1795, and re-enacted for the ceded provinces by Regulation VI, 1803, they were required, in all caſes of a written complaint being preferred to them, upon oath, for any crime or miſdemeanor, to iſſue a warrant for the apprehenſion of the perſon complained againſt. But the immediate arreſt of the accuſed being in many inſtances found unneceſſary and objectionable, eſpecially upon charges of a trivial or exaggerated nature, againſt perſons of reſpectability; and it appearing expedient that proviſion ſhould be made for authorizing an enquiry, previous to arreſt, when the magiſtrate may ſee cauſe to diſtruſt the truth of a criminal charge preferred to him; as well as for iſſuing a ſummons, inſtead of a warrant, in caſes that may not require the immediate apprehenſion of the party complained againſt; for diſpenſing with perſonal appearance to anſwer accuſations of trivial offences, when the agency of a conſtituted repreſentative may be ſufficient; and with the perſonal attendance of parties preferring charges of a criminal nature, when ſufficient reaſon can be aſſigned for their non attendance; alſo for regulating the demand of bail, in caſes wherein ſecurity for appearance may be required; the following rules were enacted for theſe purpoſes, in Regulation IX, 1807; which alſo preſcribes the forms of proceſs to be iſſued, and of bail or ſecurity bonds to be taken in conformity thereto.

Rules of proceſs enacted by R. IX, 1807. § III, C 1, and part of C.° 3. In what caſes a warrant for apprehenſion to be iſſued.

" Upon

"Upon a complaint being preferred in writing,* to a zillah or city magiſtrate, againſt any perſon ſubject to his juriſdiction, for treaſon, murder, robbery, houſe-breaking, theft, ſetting fire to a village, houſe or other building, counterfeiting the coin, or any other crime declared not to be bailable; or though not ſo expreſsly declared, involving ſuch dangerous breach of the peace, or degree of criminality, as from the facts, depoſed to before the magiſtrate, may appear to require the immediate apprehenſion of the accuſed, and to render the admiſſion of bail unſafe and improper; the magiſtrate, on the truth of the charge being depoſed to by the complainant, or in the manner required by the following ſection, ſhall iſſue a warrant under his official ſeal and ſignature, ſpecifying the crime charged; and directing the officer, entruſted with the execution of it, to apprehend the perſon accuſed. If the magiſtrate ſhall, in any bailable caſe, of the nature above deſcribed, judge it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without ſecurity for keeping the peace) it ſhall be ſo ſpecified in the warrant, with the extent of the bail (and ſecurity) required."

Section IV. In what caſes the attendance and depoſition of the complainant may be diſpenſed with.

"The attendance and depoſition of the complainant ſhall not be indiſpenſable in preferring a criminal charge, when ſufficient reaſon can be aſſigned for his non attendance. If

* With a view to diſcourage litigious and exaggerated complaints, it is required by Section XXII, Regulation VII, 1800, (re-enacted for the ceded provinces by Section XXIII, Regulation XLIII, 1803,) that all complaints for petty offences, determinable by the magiſtrates, ſhall be written upon ſtampt paper, bearing a duty of eight annas, per roll, or ſheet, whether the ſame be preferred, in the firſt inſtance, to the magiſtrate, or to a police officer. If any perſon, with a view to evade the preſcribed duty, ſhall wilfully miſrepreſent the nature or circumſtances of the offence complained of, he is declared liable to a penalty, equal to ten times the amount of the ſtamp duty; or in default of payment, to ſuch other puniſhment as the magiſtrate may judge proper; under the general powers veſted in him. But the magiſtrate may remit the ſtamp duty, in all caſes wherein the complainant may appear unable, from poverty, to diſcharge it. And he may alſo cauſe the party complained againſt to refund to the complainant the amount of any ſtamp duty paid by the latter, when it may appear proper.

And in what manner the charge may be received in ſuch caſes.

the complainant be unable to attend in perſon, or if he were not himſelf preſent at the commiſſion of the act complained of, his written plaint, preſented by an authorized agent, and corroborated by the depoſition on oath (or on a ſolemn declaration, if the rank or caſt of the deponent render it improper to require an oath,) of one or more perſons preſent, or otherwiſe perſonally informed of the truth of the complaint, ſhall be ſufficient ground for receiving the ſame, and for iſſuing proceſs againſt the party accuſed; unleſs the magiſtrate ſee reaſon for making the previous enquiry authorized by the following ſection; but no warrant of apprehenſion ſhall be iſſued at the inſtance of a complainant, unleſs the truth of the charge be depoſed to, on oath, (or under a ſolemn declaration,) either by the complainant himſelf, or by ſome other credible perſon. This ſhall not however be conſtrued to reſtrict a magiſtrate from iſſuing proceſs to apprehend a perſon ſuſpected of having committed a heinous crime, or for whoſe apprehenſion ſufficient cauſe may appear, upon the report of a police officer, or upon any other credible information."

Section V. Magiſtrate how to proceed, if he ſee cauſe to diſtruſt the truth of a complaint; and the immediate arreſt of the party complained againſt, appear unneceſſary.

"If the magiſtrate ſee cauſe to diſtruſt the truth of a complaint preferred to him, whether from the nature of the charge as manifeſtly improbable, exaggerated, or vexatious; or from the circumſtances depoſed to before him, conſidered with the known ſituation and character of the perſon accuſed; and if the immediate arreſt of the party complained againſt appear unneceſſary and objectionable; the magiſtrate is authorized to poſtpone iſſuing his warrant for apprehenſion, and to cauſe a previous inquiry to be made, either by means of the local police officers, or in ſuch other mode as he ſhall judge moſt proper, for the purpoſe of aſcertaining the truth or falſehood of the complainant's allegations. If the reſult of ſuch inquiry induce the

magiſtrate

magiſtrate to believe the charge well founded, and the offence committed be of the nature deſcribed in Section III, he ſhall iſſue his warrant for apprehending the accuſed, as therein directed. But if the accuſation appear groundleſs, or though well founded, if the offence be of a bailable nature, he is empowered, in the former caſe, to diſmiſs the complaint; or in the latter caſe, to direct bail to be taken from the accuſed, for appearance, in perſon, or by vakeel, to anſwer the charge, as provided by the following ſection."

Section VI, Proceſs to be iſſued by the magiſtrate, if the offence charged be of a bailable nature.

"UPON a complaint in writing being preferred to a zillah or city magiſtrate, againſt a perſon ſubject to his juriſdiction, for any bailable crime, or miſdemeanor, which may not appear to require the immediate apprehenſion of the accuſed, the magiſtrate, upon the party complaining making oath, (or a ſolemn declaration, if the party be of a rank or caſt which would render it improper to compel him to take an oath,) to the truth of the complaint, or without ſuch oath (or declaration,) if ſatisfactory reaſon be aſſigned by the complainant for not attending to make the ſame, and the truth of the charge be depoſed to by ſome other credible perſon or perſons, ſhall iſſue a ſummons, under his official ſeal and ſignature, to be ſerved through the foujdarry nazir, by a ſingle chupraſſy, or peon, or in the manner preſcribed for the ſervice of civil proceſs by Clauſe Second, Section II, Regulation II, 1806, if practicable and deemed expedient; or in the mode directed by the rules in force for ſerving warrants on charges of bailable offences againſt perſons employed in the ſalt department, or in the proviſion of the Company's inveſtment, if the party complained againſt be ſo employed. The ſummons in all ſuch inſtances ſhall ſpecify the offence with which the accuſed is charged, and ſhall, according to the circumſtances of the caſe, contain a requiſition to attend, either in perſon or by vakeel, to anſwer to the charge, on or before a certain day to be ſtated in the ſummons.

mons. If it be deemed neceſſary to require bail, the extent of the bail is to be ſpecified in the ſummons."

Section VII. Further proceſs to be iſſued, if the party ſummoned ſhall not attend, as required.

"If an accuſed perſon, on whom a ſummons ſhall have been ſerved, as provided in the preceding ſection, ſhall not attend in perſon, or by vakeel, and give bail (if required) according to the exigence of the ſummons, within the period limited by it, the magiſtrate ſhall iſſue a warrant under his official ſeal and ſignature, for the apprehenſion of the accuſed, and if he abſcond, ſhall proceed againſt him, in the manner directed by Section IV, Regulation XI, 1796, and Section IV, Regulation III, 1804."

Section VIII. In what caſes bail for appearance is not to be required in the firſt inſtance.

"In caſes of a trivial nature, ſuch as abuſive language, ſlight treſpaſſes, and inconſiderable aſſaults or affrays, in which there may be no reaſon to apprehend that the party complained againſt will abſcond, bail for appearance ſhall not be required in the firſt inſtance; but may at any time, during the inveſtigation of the charge, be called for by the magiſtrate, if any circumſtances ſhould occur to render it neceſſary. The officer entruſted with the ſervice of the ſummons in ſuch caſes, as well as in all other caſes wherein bail may not be required, ſhall demand only an acknowledgment of the receipt of it; and in the abſence of the party, the ſummons may be ſerved on the principal perſon in his houſe or family, if ſuch perſon be willing to receive the ſame, and to return an acknowledgment for the party. The officer ſerving the ſummons, in ſuch inſtances, as well as in all caſes wherein the magiſtrate may deem it proper to admit the private adjuſtment of the parties, ſhall be further inſtructed, on the tender of a *razeenamah*, expreſſing the plaintiff's deſire to withdraw his complaint, and the defendant's acquieſcence in the complaint's being withdrawn, to receive ſuch *razeenamah*, as a ſufficient return to the proceſs committed to him. But excepting the trivial caſes noticed in this ſection, no *razeena-*

Summons, how to be ſerved, in ſuch caſes.

Rule for acceptance of razeenamahs.

mah ſhall be received without the ſpecial ſanction of the magiſtrate; nor ſhall any private compromiſe be admitted by the magiſtrate in crimes of a heinous nature, ſuch as, on conviction, may require exemplary puniſhment for the ends of public juſtice."

Proceedings to be held by the magiſtrate upon the trial of criminal charges.

R. IX, 1793, § VI.
Extended to Benares by R. R. XVI, 1795.
C. P. R. VI, 1803, § VI.

THE magiſtrates are directed, upon receiving any criminal charge, to aſcertain from the complainant (or his repreſentative, if the charge be preferred by agency) and record upon their proceedings, on what day of the month, in what year, and at what time of the day or year, the act complained of was committed. When the perſon accuſed (or his vakeel, if he be allowed to appear by a vakeel) is brought before them, they are to enquire into the truth of the charge, by examining the parties and witneſſes; and committing their depoſitions to writing. The proſecutor and witneſſes are to be examined upon oath, or under the ſolemn declaration preſcribed, in ſimilar caſes, for parties and witneſſes in the Civil Courts, if they ſhall be of a rank or caſt, which according to the prejudices of the country, would render it improper to compel them to take an oath. But the priſoner is not to be ſworn to the truth of his anſwer, or defence: and the magiſtrates are ſtrictly enjoined to ſatisfy themſelves that all confeſſions made by priſoners are free and voluntary. When a priſoner confeſſes before them the crime or miſdemeanor of which he is accuſed, or confirms any former confeſſion, they are directed to have ſuch confeſſion, or confirmation, witneſſed by as many of their officers, or other creditable perſons, who may be preſent at the time, as the Mahomedan law requires to give it validity;* and if the caſe be referrible to the court of circuit, to cauſe ſuch witneſſes to be in attendance at the next ſeſſion of that court. The magiſtrates are likewiſe directed, notwithſtanding

Particulars of charge to be recorded.

R. IX, 1793, § V.
C. P. R. VI, 1803, § V.

Inquiry to be made after attendance of the accuſed.

R. I, 1803, § II, III.
C. P. R. VIII, 1803, § XXV.

R. IX, 1793, § V, VI.
C. P. R. VI, 1803, § V, VI.

Inſtructions relative to confeſſions of priſoners.

* The magiſtrates were inſtructed, by a circular order of the Nizamut Adawlut, under date the 4th July 1800, to cauſe all confeſſions to be atteſted generally by four, or at leaſt by three, creditable and reſpectable witneſſes, who can read and write."

ſuch

ſuch confeſſions, invariably to ſummon the witneſſes to the commiſſion of the crime or miſdemeanor, alleged againſt the priſoner; and to bind over ſuch witneſſes alſo to attend the court of circuit, (if the caſe be referrible to that court) that they may be examined, in the ſame manner as if the priſoner had denied the charge. The magiſtrates are further required to take ſpecial care, that perſons apprehended are not made to ſuffer corporal puniſhment, or otherwiſe ill treated, under the pretence of compelling them to anſwer truly to queſtions put to them, or any other pretext whatever. All depoſitions taken before the magiſtrate, are to be written on ſeparate papers, ſigned and atteſted, and arranged according to their reſpective dates. In trials referred to the court of circuit, all papers written in any other language than the Perſian, are to be accompanied with a tranſlation in that language;* and the following general rules are to be obſerved in the examination of parties and witneſſes, as well before the magiſtrates, as before the courts of circuit.

R. IX, 1793, § XV, XVI. C. P. R. VI, 1803, § XV, XVI.

Rule concerning depoſitions taken before magiſtrates.

" All examinations of parties, and witneſſes, are to be taken down in the language and character in which the perſon examined may deſire to have the ſame recorded; and ſuch perſon, whether party or witneſs, is to be allowed to read the ſame when finiſhed: or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the judge, magiſtrate, or other officer, before whom ſuch examination may have been taken, is to certify the ſame under his official ſignature on the original record; as well as on a Perſian tranſlation thereof, to be annexed to the original examination, (in caſe the ſame may have been taken down in any other language than the Perſian;) that the proceedings may be complete for the peruſal of the.

R. IV, 1797, § VII. C. P. R. VII, 1803, § XVIII.

Rules for examination of parties and witneſſes before the magiſtrates and courts of circuit.

* That part of Section XXIII, Regulation IX. 1793, (re-enacted for the ceded provinces by Section XXII, Regulation VI. 1803,) which directs an Engliſh record of all complaints, and the orders upon them, has been found of little uſe; and may be conſidered obſolete in practice.

law

law officers of the court of circuit, as well as thoſe of the Nizamut Adawlut, in the event of the trial being referred to that court. In the examination of witneſſes, leading queſtions, ſuggeſting an anſwer, or having tendency to ſuch ſuggeſtion, are to be carefully avoided; and the interrogatories to them are to be propoſed in ſuch general terms as may bring forth all the information they poſſeſs, and lead to a diſcovery of the truth. With this view, the parties are to be allowed to croſs examine the witneſſes, and the judge or magiſtrate ſhould alſo croſs examine them, when neceſſary, for the ſame purpoſe. All examinations of parties and witneſſes, beſides the name of the perſon examined, are to ſpecify the name of his or her father, and if a married woman, the name of her huſband; alſo the religion, caſt, profeſſion and age of the party or witneſs; and the village and pergunnah in which they reſide. When any ſtolen property, or inſtrument of violence, ſtated to have been found upon the priſoners, or in their houſes, is produced before the magiſtrate,* or court of circuit, the proſecutor, and any witneſſes brought to give evidence thereupon, are to be carefully examined relative to the identity of ſuch property, or inſtrument, recogniſed by them; and the circumſtances of the ſame having been found upon the priſoners, or in their houſes. The principle of this rule is to be further applied in all inſtances of circumſtantial evidence to which it may be applicable. With a view to impreſs upon the witneſſes the neceſſity of caution and accuracy in delivering their evidence, it is the duty of the Mullah Koranee, or of the Brahmin, to repeat aloud to them, in the language which they beſt underſtand, the following admonition, immediately after they ſhall have ſworn reſpectively; viz. "In delivering your evi-

* The magiſtrates and police officers are enjoined, by Section VII, Regulation XIV, 1797, "to uſe all diligence to recover ſtolen property; and the latter are authorized and required to make ſtrict ſearch in any houſes, or premiſes, in which, on the oath of the parties robbed, or other credible information, they may ſuſpect ſuch property to be concealed."

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dence under the oath now adminiſtered, you are required to declare the truth, the whole truth, and nothing but the truth! you are carefully to diſtinguiſh what you perſonally know as an eye-witneſs, or otherwiſe, from what you may have heard from others; and are ſolemnly bound to anſwer all queſtions put to you on the trial before the court, without any regard to the proſecutor or priſoner, to the beſt of your information and belief."

Sentence to be paſſed by the magiſtrate in caſes which he is authorized to determine.

When the magiſtrate has completed his inquiry, if the caſe be ſuch as he is authorized to determine himſelf, without reference to the court of circuit, he is empowered to paſs ſentence of acquittal and diſcharge, or of conviction and puniſhment, under the reſtrictions already ſtated. In charges of a more heinous nature, ſuch as, on conviction, ſubject the offender to penalties, beyond what the magiſtrate is authorized to inflict; the following rule is preſcribed. "If it ſhall appear to the magiſtrate that the crime or miſdemeanor charged againſt the priſoner was never committed; or that there is no ground to ſuſpect him to have been concerned in the committing of it; the magiſtrate ſhall cauſe him to be forthwith diſcharged; recording his reaſons. If, on the contrary, it ſhall appear to the magiſtrate that the crime or miſdeneanor was actually committed; and that there are grounds for ſuſpecting the priſoner to have been concerned in the perpetration of it; the magiſtrate ſhall cauſe him to be committed to priſon, or held to bail, (according as the offence may be bailable or not) to take his trial at the next ſeſſion of the court of circuit; and ſhall bind over the complainant to appear and carry on the proſecution, and the witneſſes to attend and give their evidence. * It is further directed, that "in all caſes of a priſoner being com-

Rule to be obſerved by the magiſtrate in caſes referrible to the court of circuit.

R. IX, 1793, § V.
C. P. R. VI, 1803, § V.

R. IX, 1796, § II.
C. P. R. VI, 1803, § XXXII.

* The court of Nizamut Adawlut having obſerved, that in many inſtances diſtinct charges, preferred againſt priſoners by ſeparate proſecutors, were blended and proceeded upon by the magiſtrates and courts of circuit in one trial, and being of opinion, that trials upon diſtinct charges, eſpecially where the proſecutors are alſo diſtinct, ſhould be kept ſeparate, the magiſtrates and courts of circuit were inſtructed accordingly by a circular order dated the 24th March 1796.

Prisoners committed or held to bail, for trial before the court of circuit, to be questioned respecting their witnesses.

mitted, or held to bail, for trial before the court of circuit, the magistrate who shall order him to be so committed, or held to bail, shall immediately, after passing such order, question the prisoner whether he wishes to have any witness or witnesses examined in his defence before the court of circuit; and, in the event of his answering in the affirmative, shall cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or in the event of the prisoner's replying in the negative, shall cause his reply to that effect to be recorded on his proceedings, for the information of the court of circuit." Also, that "in the event of any person, whether committed or held to bail, for trial before the court of circuit, at any time before the session of that court, desiring the examination of any witness or witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrates shall be careful to cause the attendance of such witnesses; as well as of those before named; at the time fixed for the trial of the party who may desire their examination."

R. IX, 1793, § XII.
R. IX, 1796, § III.
C. P. R. VI, 1803, § XII and XXXIII.

And all witnesses named by them, at any time before the session of the court of circuit, to be summoned.

In what cases bail not to be admitted.

R. IX, 1793, § VII.
R. R. XVI, 1795, § IV.
C. P. R. VI, 1803, § VII.

It is declared by Section VII, Regulation IX, 1793, (extended to the province of Benares, with an additional clause including arson, by Section IV, Regulation XVI, 1795; and re-enacted for the ceded provinces by Section VII, Regulation VI, 1803;) that "persons accused of murder, robbery, setting fire to any house or village, * house-breaking, theft, or counterfeiting of the coin, provided there shall appear sufficient grounds for committing them for trial, shall not be admitted to bail."

* This offence is omitted in Regulation IX, 1793, for Bengal, Bahar, and Orissa; but being included in the subsequent regulations for Benares and the ceded provinces, it is evident that the omission was accidental. In answer to a question respecting the discretion left to the magistrates in cases not expressly declared bailable, or excepted from bail, by the regulations, the court of Nizamut Adawlut stated their opinion, that the magistrates have a discretionary authority in such cases; but that in the exercise of it, they should be guided by the spirit of the rules prescribed, for receiving bail or not, in cases of a similar nature.

But

But the following explanation of this rule is contained in Section IX, Regulation IX, 1807.

R. IX, 1807, § IX. Explanation of preceding rule.

"In explanation of Section VII, Regulation IX, 1793, and Section VII, Regulation VI, 1803, it is hereby declared, that no ſpecies of homicide, except murder, is included in the proviſions, which forbid the admiſſion to bail of perſons accuſed of murder. If the charge be for manſlaughter, or any ſpecies of illegal homicide not involving the crime of murder, the magiſtrate is authorized to proceed in the firſt inſtance, either by warrant for taking into cuſtody, or by ſummons requiring bail, as he may judge proper, on conſideration of the circumſtances of the caſe, and of the condition and character of the party accuſed. After the enquiry directed by Section V, Regulation IX, 1793, and Section V, Regulation VI, 1803, if the magiſtrate ſhall be of opinion, that the facts and circumſtances in evidence do not eſtabliſh the crime of murder, but that there is ſufficient ground for bringing the perſon complained againſt to trial, before the court of circuit, on a charge of manſlaughter, or other culpable homicide, the party ſhall be held to bail, for appearance before the court of circuit; but the magiſtrate is authorized to releaſe the accuſed, if the homicide in which he may appear to have been concerned, ſhall, from the whole of the evidence, be clearly ſhewn to have been accidental or juſtifiable, under the Mahomedan law and regulations. The principle of the preceding clauſe, is alſo declared applicable to perſons appearing, from the magiſtrate's enquiry, to have been only privy, or incidentally acceſſary, to crimes of a heinous nature, without being concerned therein, either as principals, or as aiding and abetting, procuring or inſtigating, the perpetration thereof; and in all caſes, whether of trial before the magiſtrate or before the court of circuit, if the admiſſion of bail have not been prohibited by the regulations, and the bail tendered ſhall appear ſufficient for ſecuring the appearance of the party accuſed, he ſhall be admitted to bail, until

In caſes of homicide, not involving the crime of murder.

In caſes of perſons only privy, or incidentally acceſſary to, crimes of a heinous nature.

General rule, if the admiſſion of bail have not been prohibited by the regulations.

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Special rule for admiſſion of bail, by order of the court of circuit, in caſes declared not bailable by the regulations.

ſentence be paſſed upon the charge againſt him. Moreover, in ſpecial inſtances, wherein the court of circuit, on a report from the magiſtrate, or on other ſatisfactory information before them, may deem it juſt and proper to admit to bail a perſon charged with an offence not bailable under the general proviſions contained in the regulations, that court is declared competent to inſtruct the magiſtrate to accept ſufficient bail, inſtead of keeping the accuſed in confinement, whilſt the charge againſt him is under trial. The court of circuit may likewiſe, in all bailable caſes, wherein the bail required by the magiſtrate ſhall appear exceſſive, direct the magiſtrate to receive ſuch bail as may be deemed ſufficient to anſwer the purpoſe intended by it.' Section X, of the regulation laſt mentioned, alſo preſcribes the form of bail-bond to be taken, in all caſes, from perſons held to bail for trial before the courts of circuit.* If a magiſtrate commit any zemindar, independent talookdar, or other actual proprietor of land,† to be tried before the court of circuit, he is to notify the commitment to the collector of the diſtrict, that, if neceſſary, he may take meaſures to prevent any delay in the payment of the public revenue aſſeſſed upon the lands of the offender.

Courts of circuit may alſo reduce the bail required by magiſtrates, if exceſſive.

R. IX, 1807, § X. Form of bail-bond to be taken from perſons held to bail for trial before the courts of circuit.

R. IX, 1793, § XVIII. Extended to Benares, by R. R. XVI, 1795, § IV, and re-enacted for ceded provinces, by C. P. R. VI, 1803, § XVIII. Commitment of landholders to be notified to collectors.

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* It appearing to have been the practice of ſome of the magiſtrates to confine in fetters all perſons ordered for trial before the courts of circuit, and not admitted to bail, or unable to give the bail required from them; whatever might be their ſituation in life, or the nature of the offence charged againſt them; the courts of circuit were inſtructed by the Nizamut Adawlut, on the 4th January 1805, to notify to the magiſtrates of their reſpective diviſions, "that ſuch practice, with reſpect to perſons charged with offences not of a heinous nature, or who may be committed to priſon from inability to find ſufficient bail, being unneceſſary to ſecure their appearance at the time of trial (the only object of perſonal cuſtody in ſuch caſes) and it being the evident intention of the regulations that no priſoner, before he is brought to trial, ſhould ſuffer more corporal reſtraint, or perſonal ignominy, than are unavoidable for his ſafe cuſtody and appearance at the time of trial; they are required to be careful in obſerving this principle; and conſequently are not to confine in fetters any perſon for trial before the court of circuit, who may be charged with a bailable offence, and committed to priſon from inability to find bail; or who, though not admitted to bail, may not have been charged with an heinous offence; ſuch as, from the nature of the circumſtances of the caſe, conſidered with the priſoner's condition of life; may appear to render the uſe of irons indiſpenſably requiſite for his ſecure cuſtody."

† Proprietors of land, *paying revenue to Government*, appear to be intended by the rule ſtated; the object of which alſo extends to ſudder farmers, anſwerable for any part of the public revenue.

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The magiſtrates, on receiving notice from the judges of the courts of circuit, of the time by which they expect to arrive at their reſpective ſtations, are to iſſue a written publication, requiring, by a fixed date, the attendance of all perſons admitted to bail, for trial before the court of circuit, as well as of all proſecutors and witneſſes bound over to appear before that court; under penalty of forfeiting their recognizances. A copy of this publication is to be ſent to the Cauzee of each pergunnah; and to be fixed up, in ſome public place, in the principal town or village of each pergunnah: or, in the principal cities, at the offices of the cutwal, and darogahs of wards. On the arrival of the judges of circuit, the magiſtrates are to deliver to them an Engliſh and Perſian calendar of the priſoners committed, or held to bail, to take their trial before the court of circuit; prepared in a preſcribed form; and ſpecifying, beſides the names of the proſecutors and priſoners, a brief ſtatement of the charge and when preferred; the date on which each priſoner was apprehended; the names of the witneſſes; and an abſtract of proceedings, ſtating on what grounds and date, the priſoners were committed, or held to bail, for trial before the court of circuit. This calendar is to be accompanied with the magiſtrate's proceedings on each charge; and all material documents relative thereto. To furniſh the courts of circuit with the fulleſt information on the non-attendance of any abſent witneſs, and to enable them to aſcertain that all due meaſures have been taken to cauſe the attendance of the whole of the witneſſes named by the proſecutors and priſoners, it is further directed, that the original returns made to the magiſtrate, by the nazir, and perſon deputed on his part to ſerve the ſummons upon any witneſs not in attendance, be ſubmitted to the court of circuit, with the calendar abovementioned; and that the nazir, and perſon ſo deputed, be kept in attendance to anſwer any interrogatories which the court may judge it neceſ-

R. IX, 1793. § XI and XIII. Extended to Benares, by R. R. XVI, 1795, and re-enacted for the ceded provinces, by C. P. R. VI, 1803, § XI. Publication to be iſſued on notice of expected arrival of the court of circuit.

R. IX, 1793. § XIII and XIV. C. P. R. VI, 1803, § XIII and XIV. Calendar of perſons committed or held to bail, for trial before the court of circuit, to be ſubmitted to that court, with the magiſtrate's proceedings on each charge, and all relative documents.

R. IX, 1796. § IV. C. P. R. VI, 1803, § XIV. Alſo returns to ſummonſes of abſent witneſſes.

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R. IX, 1793. § XVII. C. P. R. VI, 1803. § XVII. R. IX, 1807. § XXII.

Further calendars to be ſubmitted by magiſtrates.

1. Of perſons diſcharged from want of evidence.

2. Of perſons tried for offences cognizable by the magiſtrate and his aſſiſtant.

ſary to put to them. The magiſtrates are alſo to lay before the judges of circuit, with their proceedings and all original papers relative thereto, a ſecond calendar of perſons apprehended by them, upon charges cognizable by the court of circuit, but diſcharged, from want of evidence, ſince the preceding ſeſſion; and a third calendar, of perſons tried for crimes or miſdemeanors cognizable by themſelves, and their aſſiſtants; ſpecifying the charge againſt each priſoner, and the ſentence paſſed thereupon. *

Monthly reports to be tranſmitted by the magiſtrates to the Regiſter of the Nizamut Adawlut.

THE magiſtrates are required to tranſmit to the regiſter of the Nizamut Adawlut the following monthly reports, drawn out according to the forms preſcribed for them reſpectively. †

R. IX, 1793, §. XXVIII. C. P. R. VI, 1803. §. XXVII.

1. A report of perſons apprehended in each month; ſpecifying the name, charge, and date of apprehenſion, and whe-

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* On the 1ſt November 1804, the magiſtrates were inſtructed, by a circular order from the Nizamut Adawlut "to lay before the judge of circuit, at each jail-delivery, a report of all perſons confined by order of the magiſtrate until they find ſecurity for their good behaviour." And on the 8th Auguſt 1807, they were further directed to diſtinguiſh in ſuch reports, "the names of priſoners who have been confined more than ſix months, without confirmation of the magiſtrate's order by the court of circuit; ſubmitting, at the ſame time, an abſtract ſtatement, in Perſian or Engliſh, ſpecifying the names of the priſoners, the period of their confinement, and the circumſtances of each caſe;" together with their proceedings on the commitment, and ſecurity required. The court of Nizamut Adawlut added, that "the judge of circuit, under the powers veſted in him by Regulation IX, 1807, after inſpecting the proceedings, and making any further inquiry deemed neceſſary, will paſs ſuch order as may appear juſt and proper; either for the releaſe of the priſoner on his Mochulka, or for reducing the amount of ſecurity required (if this appear exceſſive); or for the further detention of the priſoner until he give the ſecurity required: and, in the latter caſe, the priſoner ſhould not afterwards be releaſed without ſecurity, unleſs authorized by the court of circuit on report of the magiſtrate." Section XI, Regulation LIII, 1803, contains further inſtructions to the magiſtrates concerning priſoners detained for ſecurity, under orders of the courts of circuit or Nizamut Adawlut.

† The magiſtrates were informed, by a circular letter from the Regiſter of the Nizamut Adawlut, under date the 8th June 1796, that they were at liberty to tranſmit the detailed monthly and half yearly reports required by the regulations, in Perſian; with an Engliſh Abſtract.

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ther the perſon has been releaſed, puniſhed, or ordered for trial before the court of circuit.

2. A report of caſualties, (viz. removals to other ſtations, deaths, and eſcapes;) and of priſoners releaſed, in each month.

R. IX, 1793, §. XXX. C. P. R. VI, 1803. §. XXIX.

3. A report of priſoners ſentenced by the court of circuit in the current month.

4. A report of priſoners, whoſe trials are under reference to the Nizamut Adawlut.

5. A report of ſentences received from the Nizamut Adawlut in the preſent month.

[illegible] reports are to be diſpatched ſo as [illegible]tta by the 20th of the enſuing month. The magiſtrates are alſo to tranſmit to the Nizamut Adawlut half yearly reports of convicts in confinement, under ſentence, to be diſpatched within twenty days after the completion of the ſeſſion of the court of circuit. And in the month of January of each year, two annual reports are to be furniſhed by them; viz. a report of all criminal caſes depending before the magiſtrate, and his aſſiſtants; ſpecifying the names of the accuſed; whether in confinement or under bail; the crime charged; date of charge; date of apprehenſion, or firſt appearance of the accuſed; and explanations in any inſtances of conſiderable delay.—2dly. An abſtract ſtatement of the number of robberies and other crimes of a heinous nature, aſcertained by the police officers, or otherwiſe, to have been committed within their reſpective juriſdictions, in the preceding Engliſh year; the

R. IX, 1793, §. XXX. C. P. R. VI, 1803, §. XXX. Half yearly reports to be ſent to the Nizamut Adawlut.

Annual reports to be furniſhed to Nizamut Adawlut. R. IX, 1807. §. XXV.

R. IX, 1807. §. XXVI.

ne number of perſons, known, or ſuppoſed, to have been concerned in the commiſſion of ſuch crimes; and the number apprehended and convicted, or committed for trial before the courts of circuit. To enable the magiſtrates to furniſh this ſtatement they are to require from their police officers a monthly report of heinous crimes committed within their reſpective juriſdictions; the number of perſons known, or ſuppoſed to have been concerned in the commiſſion of them; and when any have been apprehended, the number and names of the perſons apprehended: remarks on the increaſe or decreaſe of any particular deſignation of crime, on the greater or leſs number of perſons concerned, or appre- or on any other circumſtance which may call for in the report; the object ſuppreſſion of

Reg. IX, 1793. & XX, XXI. Extended to Benares by R.

The magiſtrate is required to viſit the jail at his ſtation, at leaſt once in every month; and to redreſs all well founded

* With a ſimilar view, and to enable the courts of circuit to judge of the progreſs made towards the ſuppreſſion of crimes, the magiſtrates were inſtructed by a circular order, from the Nizamut Adawlut, dated the 1ſt November 1804—"to lay before the judge of circuit, at each jail delivery, a ſtatement of crimes committed within their reſpective juriſdictions; according to the form tranſmitted to them with the Court's circular order of the 7th March 1803;" being the ſame as that ſince included in Section XXVI, Regulation IX, 1807. The accuracy of ſuch ſtatements cannot be relied upon; but they afford ſome criterion by which to judge of the crimes moſt prevalent. The following is an abſtract of the ſtatements received by the Nizamut Adawlut, for the provinces of Bengal, Bahar, Oriſſa, and Benares.

Year	Robbery and murder.	Robbery without murder.	Affrays and violent aſſaults.	Murder.	Houſe-breaking.	Thefts of conſiderable amount.	Receiving ſtolen goods.	Arſon.	Rape.	Adultery.	Perjury.	Forgery.
1802	155	1442	556	598	998	1499	255	107	116	174	113	53
1804	138	1540	210	399	1116	1580	334	106	80	101	138	53
1805	137	1294	371	450	1249	1705	382	109	86	123	180	77
1806	97	1358	386	433	1139	1571	306	87	86	124	149	62
1807	160	1378	268	354	1071	1677	319	82	80	114	142	68

complaints

complaints of ill treatment, which may be preferred by the prisoners against the jailer, or any officers having charge of them. He is also directed to be particularly attentive to the health and cleanliness of the prisoners; and to see that the surgeon of the station attends and administers to the sick. Separate apartments in the jail are to be allotted for the different descriptions of prisoners; * as well as to divide the male from the female prisoners; and the magistrates are enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, from being practised, in their respective jails. To facilitate the re-apprehension of convicts sentenced to imprisonment for life, who may escape, all convicts of this description are to have their name, crime, date of sentence, and designation of the court by which it may have been passed, inscribed on their foreheads, by the process termed *godna*, which leaves a blue mark that cannot be effaced without tearing off the skin. †

R. XVI, 1795, and re-enacted for the ceded provinces by R. VI, 1803, § XX, XXI. Directions to magistrates relative to jails, and care of prisoners, at their respective stations.

R. IV, 1797, § XI. C. P. R. VII, 1803, § XXXV. Inscripton to be marked on foreheads of convicts sentenced to confinement for life.

The

* On the principle of this rule, viz. that persons convicted of petty offences only should not be made to associate with heinous offenders, whereby a principal object of their imprisonment, their correction and amendment, would be defeated, the court of Nizamut Adawlut directed, by a circular order dated the 4th April 1807, that prisoners sentenced to imprisonment by the magistrates should be kept separate from convicts sentenced by the court of circuit, or Nizamut Adawlut, when employed on the public roads, or on other public works. Such employment sometimes forms part of the sentence upon the prisoner. But the Nizamut Adaulnt having ascertained from their law officers, that the employment of all convicts sentenced to imprisonment, in the repair of the public roads, or in other similar public works, is consistent with the Mahomedaa law, directed, on the 6th April and 10th August 1796, that all convicts, under sentence of imprisonmet, should be so employed, excepting persons who may be incapable of bodily labour, from age, sickness, or other infirmity; or whom, from their rank and situation of life, it may appear improper to employ in this manner: in which case the magistrates are to apply for the special instructions of the Nizamut Adawlut; unless (as explained on the 28th March 1807,) the exemption from hard labour be expressly provided for in the sentence.

† In consequence of the frequent escape of convicts whilst employed on the roads, or in other places out of jail, under the custody of a single sepoy or burkundaz, the court of Nizamut Adawlut, on the 14th November 1798, prohibited the employment of any convicts, out of jail, under the custody of a single guard; and directed that the convicts under charge of the several magistrates be employed, on all occasions, as far as possible, collectively; under the guard of as many sepoys and burkundazes, as can be

 spared

Provisions for the punishment of convicts who escape, already stated.

The provisions enacted by Section IX, Regulation LIII, 1803, for the punishment of convicts who may effect their escape during the period of their sentences, and be re-apprehended, have been already stated.* By Section VI, Regulation II, 1799, (re-enacted for the ceded provinces by Section XXIII, Regulation VIII, 1803,) it is further provided, that "all guards of whatever description, having the custody of convicts who escape, and, who may appear, on the magistrate's inquiry, to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and should any connivance, or further criminality, appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the court of circuit; that on conviction they may receive the punishment which the law directs." This provision has been since extended to guards in charge of prisoners who may escape from their custody before conviction. But it is not to be considered applicable "to military guards from the provincial battalions (while such battalions shall continue subject to military law) or from any regular corps of the army. Whenever it shall appear to a magistrate, that a guard furnished by a provincial battalion, or by any regular corps of

R. II, 1799, § VI. C. P. R. VIII, 1803, § XXIII. Guards having custody of convicts who escape, how to be proceeded against, for neglect, connivance or other criminality.

C. P. R. VIII, 1805, § XIV, C. 5, 6. R. XI, 1806, § X. Extended to guards having custody of prisoners who escape before conviction.

But not applicable to military guards.

Such guards how to be proceeded against, for trial by a court martial, in all cases involving a breach of military duty.

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spared from other duties for the purpose. By the circular orders of the Nizamut Adawlut, issued on the 21st June and 19th July 1803, the magistrates were further restricted from the employment of any convicts in the gardens of individuals, or on other private works, without the sanction of the courts of circuit; who are authorized to permit the employment of part of the convicts, in particular instances, when they cannot be all employed on the public roads, or other public works, in any works undertaken by individuals, which may appear to combine public utility with private convenience.

* In page 422. On the 18th September 1804, the magistrates were further instructed by the Nizamut Adawlut to transmit to that court an early report of the escape of convicts, sentenced by the courts of circuit or Nizamut Adawlut, with information of the measures taken to re-apprehend the persons escaped: as well as of any proceedings held under Section VI, Regulation II, 1799, respecting the guards from whose custody the escape may have been effected. It may be added, that an instance having occurred of a prisoner's escape from jail, by feigning himself dead, the Nizamut Adawlut instructed the several magistrates on the 29th June 1801, not to allow the removal of the bodies of prisoners, stated to have died in jail, until an inquest shall have been held upon them, by the Native Surgeon, and such other persons as the magistrate shall appoint.

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the army, has been guilty of wilful neglect in guarding the priſoners under his charge, or in conniving at the eſcape, or the attempt to eſcape, of any priſoner; or of any other act of a criminal nature in the diſcharge of his duty; the magiſtrate ſhall cauſe the offender to be delivered over to the officer commanding the provincial battalion, or the detachment to which he may belong; with a charge in writing; that he may be tried, and puniſhed on conviction, by a court martial. The ſame mode of proceeding is directed to be obſerved with reſpect to any other offence involving a breach of military duty, and properly cognizable by courts martial; but ſhall not be held applicable to any criminal charge againſt ſuch guards or other ſepoys, whether belonging to the provincial battalions or regular corps of the army, which may not involve a breach of military duty, and the cognizance of which may therefore appertain to the civil courts."

R. IX. 1793, § XXVII. C. P. R. VI, 1803, § XXIV. Subſiſtence money allowed to priſoners.

Subsistence money, at an eſtabliſhed rate, is allowed to all priſoners from the time of their apprehenſion to the date of their diſcharge.* For the maintenance of priſoners who have been ſome time in confinement, until they can obtain employment, or procure for themſelves ſome other means of livelihood, the magiſtrates are authorized to pay to all perſons releaſed from jail, after an impriſonment of ſix months, or upwards, under ſentence, and who may appear to be in need of ſuch aſſiſtance, a ſum, not exceeding five rupees, ſufficient to maintain them for one month. The magiſtrates are further authorized to pay to all proſecutors and witneſſes, who may appear to be in need of ſuch aſſiſtance, a daily allowance of two annas each, during their attendance on the court of cir-

R. IX, 1793, § XXV. C. P. R. VI, 1803, § XXV. Perſons confined for ſix months to receive on their diſcharge a ſum, not exceeding five rupees, to maintain them for one month.

R. IX, 1793, § XXVI. C. P. R. VI, 1803, § XXVI. Allowance to indigent proſecutors and wit-

* Two and a half puns of cowries, or cucha pice, per diem, are the uſual allowance. But it may be reduced to two pice, or puns, or raiſed to three pice or puns, (about three quarters of an anna) when the magiſtrate may judge it proper, on conſideration of the cheapneſs or dearneſs of proviſions. A blanket and ſome other articles of bedding and clothing are alſo provided for each convict.

cuit;

Peſſes, during their attendance on the court of circuit.

cuit; * including alſo as many days as may be ſufficient to come from, and return to, their reſpective houſes. In addition to theſe payments, the magiſtrates are empowered to give a reward of ten ſicca rupees for every dacoit, or robber, that may be apprehended and delivered into their cuſtody, to be paid on the conviction of the offender. And ſpecial rewards, to a much larger amount, are frequently authorized by Government, on the ſuggeſtion of the magiſtrates or criminal courts, for the apprehenſion of known offenders; eſpecially the ſirdars or leaders of gangs of robbers, the ſeizure of whom is of the greateſt importance to the peace of the country, and to the lives and property of the inhabitants. †

R. IX, 1793, § XXIV.
B. R. XIV, 1795, § IV.
C. P. R. VI, 1803, § XXII.
Reward to be paid for every robber apprehended and delivered up to the magiſtrate.

PROVISION is made by Sections III and IV, Regulation VI, 1796, (re-enacted for the ceded provinces by Section XX and XXI, Regulation VIII, 1803,) for the pardon of acceſſaries to crimes of a heinous nature, on condition of their making a full diſcloſure of every circumſtance within their knowledge, relative to the commiſſion of the crime, and ſeveral perſons concerned in it;

R. VI, 1796, § III, IV.
C. P. R. VIII, 1803, § XX, XXI.
Proviſion for pardon of acceſſaries to heinous crimes, on condition of a full diſcloſure of circumſtances, and names of perſons concerned.

* This allowance is alſo occaſionally paid to indigent proſecutors and witneſſes attending the inquiry into criminal charges before the magiſtrate.

† By an order of the Governor General in Council, paſſed on the 17th Auguſt 1798, the magiſtrates are reſtricted from paying any other than the fixed rewards authorized by the Regulations, without a certificate from the court of circuit before whom the perſons apprehended have been tried. And the judge of circuit is directed, after inſpecting the orders of Government and proclamations of the magiſtrate, to certify the names of ſuch perſons as may appear to have eſtabliſhed their claim to particular rewards, offered by the magiſtrate, with the ſanction of Government. The ſyſtem of granting rewards, to encourage the diſcovery and apprehenſion of heinous offenders, is conformable to the laws of England (vide Blackſtone, B. IV, p. 294,) and appear to be eſſentially neceſſary in a country where the police is imperfect; and the inhabitants are generally diſinclined to complain, or give information, againſt robbers of the moſt dangerous character, whoſe revenge they dread, in the event of their not being convicted, or being releaſed at a future period. Objections have been ſtated againſt the fixed reward of ten rupees, as being too general, and encouraging abuſes by a claſs of men, called goindahs or informers, who make it their profeſſion to ſeek for and communicate information againſt robbers, in expectation of the reward on their conviction. But though abuſes are ſometimes committed by perſons of this deſcription, the attention of a vigilant magiſtrate is ſufficient to check them, by detection and puniſhment; and under proper control they are capable of being moſt uſeful aſſiſtants to the officers of police.

ſuch

ſuch as may lead to the apprehenſion or conviction
cipal offender or offenders. The magiſtrates and judg
cuit are to report to the Nizamut Adawlut whenever
appear expedient to tender an offer of pardon for this purpo
communicating, at the ſame time, all the information they may
poſſeſs, reſpecting the circumſtances of the caſe. The court of
Nizamut Adawlut, if they concur in the expediency of the pro-
poſed offer of pardon, are to ſubmit the ſame to the Governor
General in Council; and if authorized by him, on the condition
of its being fulfilled, are to confirm it by a written certificate,
under the ſignature of their regiſter and the ſeal of the court. *

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* The following circular letter, on the ſubject of the Regulation cited, was written to the courts of circuit, (and directed to be communicated to the magiſtrates within their reſpective diviſions) by order of the Nizamut Adawlut, on the 22d July 1802.

"The evidence of accomplices being inſufficient, under the Mahomedan Law, to prove any criminal charge, though admitted in ſome degree to corroborate other evidence; it has appeared to the Court of Nizamut Adawlut, from the trials which have come before them, in which an offer of pardon has been made in purſuance of Regulation VI, 1796, for the conviction of principal offenders, that ſuch offer is ſeldom of any effect for the purpoſe intended; whilſt, at the ſame time, the frequent pardon of acknowledged accomplices in murder, gang robbery, and other heinous crimes, is obviouſly objectionable and repugnant to the ends of juſtice. The court have therefore determined, in the exerciſe of the diſcretion veſted in them by the above regulation, to reſtrict their applications to the Governor General in Council for an offer of pardon to accomplices as follows.

Firſt. To caſes wherein the zillah or city magiſtrates may judge it adviſable to propoſe an offer of pardon, on the conditions ſpecified in Section III, Regulation VI, 1796, to an accomplice in any of the crimes therein deſcribed, with a view to the diſcovery and apprehenſion of the principal, or ſeveral of the perſons by whom ſuch crimes may have been committed, or for the diſcovery of facts and circumſtances, which may aſſiſt in the conviction of the principal offenders.

Secondly. To caſes in which the judges of the courts of circuit may deem it expedient, on conſultation with their law officers, to tender an offer of pardon, on the preſcribed condition, to any priſoner charged as an accomplice, with a view to have his evidence againſt the principal offender, or offenders, or for any cauſe which, in the judgment of the court of circuit, may render it adviſable to propoſe ſuch offer of pardon, under the proviſions contained in Regulation VI, 1796.— In the caſes laſt ſtated, the judge of the court of circuit, before whom the trial may be held, will, of courſe, addreſs the Nizamut Adawlut, as directed by Section IV, Regulation VI, 1796; and in the former caſes, the zillah and city magiſtrates will make their reports to the court of Nizamut Adawlut as hitherto; but, upon obtaining the ſanction of the Governor General in Council, to an offer of pardon, in ſuch caſes, viz. when the

...on XI, 1796, and Sections IV, V, of Regulation IX, ...enacted for the ceded provinces by Sections II, III, IV, ...egulation III, 1804) provide for an attachment of pro... ...cy to compel the appearance of persons, charged with acts of a criminal nature, who may abscond, or otherwise evade the process issued against them: as well as for the punishment of resistance to the processes of the zillah and city magistrates, or officers of police. If any person charged with an offence, of a criminal nature, abscond, or conceal himself, so that upon a process issued against him, by a zillah or city magistrate, or a police officer, he cannot be found, the magistrate is to cause a written proclamation, in the Persian, and Bengal or Hindoostanee languages, requiring the absent party to appear and answer the charge against him within a fixed period, not less than one month; to be publicly read and proclaimed by beat of drum; and to be affixed in some conspicuous part of his cutcherry; as well as on the outer door of the house in which the party may have usually dwelt; or some conspicuous place in the village, in which he may have generally resided. If the party shall not

...; 1796, § ...V, VI. ...P. R. III, ...1804, § IV. Magistrate how to proceed when a person, against whom any criminal process may be issued, shall abscond or conceal himself.

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party is to be examined, as an informer, not as a witness, instead of leaving it to the court of circuit to examine him, they are themselves to take his examination, without oath, and to submit it, with the proceedings on his trial, to the court of circuit; who, if he shall be found to have fulfilled the condition of his pardon, by a full disclosure of every circumstance within his knowledge, relative to the commission of the crime and the several persons concerned in it, are to report the same to the court of Nizamut Adawlut, for the purpose of obtaining a confirmation of his pardon in the mode prescribed by Section III, Regulation VI, 1796."

"The court desire you will communicate the foregoing remarks and instructions to the several magistrates within your division; at the same time advising them that they are meant to be applied strictly to *accomplices*, or persons present at, aiding, or abetting, the commission of crimes, (without being the chief actors or actual perpetrators;) and are not intended to be applicable to accessaries, either before or after the fact, who may not have been present when the crime was committed, or by any means concerned in the perpetration of it. For any such accessaries, whose evidence can tend to the conviction of offenders charged with the crimes specified in Section III, Regulation VI, 1796, and for whom the zillah and city magistrates, or courts of circuit, may judge it advisable to propose a conditional offer of pardon, under the provisions in that Regulation, the court will have no objection (provided the report before them of the circumstances of the case may appear to require it) to apply for the sanction of the Governor General in Council to such pardon as heretofore."

appear

appear and deliver himself up within the period fixed by such proclamation, the magistrate, on receiving the nazir's return to that effect * is to order the attachment of any land or other real property held by the absentee within his jurisdiction, to be made by the collector of the district. In the event of the attendance of the party, for whose appearance the attachment was ordered, the magistrate is to direct, by a precept to the collector, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of it. Should the absentee neglect to attend for six months after the lands have been put under attachment, the magistrate is to report the case to the Governor General in Council, who will pass such order upon it, and upon the future disposal of the lands, as he may judge proper. If any person amenable to the authority of a zillah or city magistrate, or police officer, shall resist, or cause to be resisted, any warrant, order, or other process, of such magistrate or police officer, the magistrate of the zillah or city in which such resistance may have been made, on the same being charged upon oath, (or under a solemn declaration taken instead of an oath) shall, if practicable, cause the party accused to be apprehended, and brought before him to answer the charge. If the party shall abscond or conceal himself so that he cannot be apprehended; or if, on any account, he cannot be immediately apprehended; the magistrate is to cause a written proclamation to be issued, in the manner above stated with respect to other cases of evasion of process. If the party shall not, within the period fixed by the proclamation, appear to answer the charge, or if he shall appear, or be apprehended, and after receiving his answer, and hearing the evidence he may adduce in his defence, it shall be proved to the satisfaction of the magistrate, that he is guilty of resistance of process, the magistrate is to pass judgment against

R. XI, 1796, § II.
R. IX, 1801, § V.
C. P. R. III, 1804. § II.
Proceedings to be held respecting persons charged with resistance of process.

* Proof of the proclamation having been duly made, as prescribed by the regulations, is, of course, to be also taken, and recorded on the magistrate's proceedings, in the case referred to.

Sentence to be paſſed, on conviction, by the magiſtrate.

him in the following manner. In caſes not attended with any aggravating circumſtances, wherein the magiſtrate ſhall judge it ſufficient to inflict the puniſhment which he is authorized to inflict for petty offences, he is authorized to paſs ſentence accordingly; ſubject to a reviſion of his proceedings by the court of circuit, under the general power veſted in that court. If the circumſtances of the caſe appear to require a more exemplary and ſevere puniſhment than what the magiſtrate is authorized to inflict, he is to refer his proceedings for the ſentence of the Nizamut Adawlut. If the offender be a landholder, or ſudder farmer of land, ſituated within the zillah or city in which the reſiſtance has been made, the magiſtrate is, at the ſame time, to declare ſuch land, or farm, forfeited to government, and to cauſe the immediate attachment of it by the collector of the zillah. If the offender be not a landholder, or ſudder farmer, the magiſtrate is to declare him liable to the payment of ſuch fine to government as may appear proper, on conſideration of his offence and condition in life, and to cauſe the attachment of any property appertaining to him for the recovery of it. The court of Nizamut Adawlut, in all caſes wherein the forfeiture of the offender's land or leaſe may appear to them too ſevere a puniſhment for the offence, are authorized to commute the ſame for ſuch fine to government as they may judge adequate; and to order the attachment of the lands to be taken off on payment of it. The ſentence of the Nizamut Adawlut is declared final, upon references made to that court under the rule above ſtated, in all caſes of fine, impriſonment, or corporal puniſhment. But if the magiſtrate's judgment of forfeiture be confirmed by the Nizamut Adawlut, the proceedings upon the caſe are to be tranſmitted to the Governor General in Council; who will determine whether the ſentence of forfeiture ſhall be put in force, or commuted to a fine, or otherwiſe, and if he order the land or leaſe of the offender to be forfeited, will, at the ſame time, cauſe the neceſſary inſtructions to be iſſued to the collector for

Referrible in certain caſes, to the court of Nizamut Adawlut.

R. XI, 1796, § III.
C. P. R. III, 1804, § III.
In what caſes the ſentence of the Nizamut Adawlut is final, or ſubject to the orders of the Governor General in Council.

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the future diſpoſal of the land. That no doubt might be entertained whether perſons charged with reſiſtance of proceſs, and apprehended, may be admitted to bail, it has been declared, that perſons apprehended on a charge of reſiſtance of proceſs, who may not be accuſed of any aggravating crime, ſuch as is expreſsly declared not bailable by the regulations, are to be admitted to bail, until a final deciſion be paſſed upon the charge, provided the bail offered by them ſhall appear ſufficient for ſecuring their appearance during the preſcribed inveſtigation of the caſe.

R. IX, 1801, § IV.
C. P. R. 11th 1804, § V.
Perſons charged with reſiſtance of proceſs declared bailable; unleſs charged alſo with other offences not bailable.

When a warrant, ſummons, or other criminal proceſs, may be ſerved by a burkundaz, chuppraſſy, or other public officer, receiving wages from government, (and ſuch officers are ordered to be employed in ſerving all criminal proceſſes, eſpecially in caſes of a heinous nature, as far as circumſtances admit) no diet money, or other allowance or gratuity, is to be demanded, or received, from the complainant or accuſed. The demand or receipt of ſuch, by any public officer, in violation of this rule, is declared puniſhable as a criminal offence, on conviction before the magiſtrate, or court of circuit; and the offender is compellable to reſund the amount received, beſides being liable to immediate diſmiſſion from office. When peons, or other perſons, not receiving wages from Government, may be unavoidably employed in ſerving any criminal proceſs, they are authorized to demand and receive *tullubanah*, (a daily allowance inſtead of wages) at the rate of two annas per diem (or three annas in diſtricts where ſuch higher rate may be uſual and neceſſary) during the time they may be ſo employed: but are not to demand or receive more, under the penalties above ſtated. The tullubanah, in ſuch caſes, is payable, in the firſt inſtance, by the party at whoſe inſtance the proceſs is iſſued, (unleſs the charge be of a heinous nature, and the magiſtrate deem it proper that the neceſſary expenſe of proceſs be paid on the part of government) ſubject to

R. IX, 1801, § XIV. Clauſes 2 & 3.
Criminal proceſs by whom to be ſerved, and what perſons forbidden or authorized, ſtrictly on allowance for ſerving it.

Penalty for any unauthorized demands or exactions.

Authorized allowances by whom payable, and in what caſes re-imburſement may be adjudged.

re-imburſement from the accuſed, if the charge be eſtabliſhed, under the diſcretion veſted in the criminal courts to adjudge a re-imburſement of coſts in particular inſtances, when it may appear equitable. *

R. I, 1803, § II.
C. P. R. VIII, 1803. § XXV.

Summonſes to witneſſes in criminal caſes how to be ſerved.

And how far rules preſcribed to civil courts, for procuring attendance and evidence of witneſſes, are applicable to magiſtrates and criminal courts.

SUMMONSES to witneſſes in criminal caſes are to be ſerved by a chuppraſſy, peon, or other officer of the magiſtrate, or by a police officer, inſtead of being delivered to parties to be ſerved on their own witneſſes, as admitted, at the diſcretion of the judges, in civil caſes. In other reſpects the magiſtrates and criminal courts are to be guided by the rules preſcribed for the civil courts in procuring the attendance and evidence of witneſſes; and have the ſame power of committing to cloſe cuſtody, and fining in a ſum not exceeding five hundred rupees, any witneſs duly ſummoned, who, after receiving the ſummons, may not attend, as thereby required, or though attending, may refuſe to give evidence and ſign his depoſition.

R. XIII, 1797, § II, III, IV.
C. P. R. XII, 1803, § XVII, XVIII, XIX.

In what caſes, and under what proviſion, the magiſtrates are authorized to employ their aſſiſtants, in the execution of any part of their preſcribed duties.

R. IX, 1807, § XX.

Limitation of judicial powers to be exerciſed by the aſſiſtant.

THE zillah and city magiſtrates are authorized to employ their aſſiſtants (being covenanted ſervants of the company) in the execution of ſuch part of their preſcribed duties, as, from the extent of their general buſineſs, or other cauſe, they may be unable to give due attention to themſelves; provided that previouſly to any aſſiſtant's entering upon the exerciſe of judicial authority, he ſhall take and ſubſcribe an oath, correſponding with that preſcribed to the magiſtrates. Aſſiſtants ſo authorized and qualified to act as magiſtrates are to be guided by the regulations in force, as far as the ſame may be applicable to the duties committed to them: and are veſted with the ſame powers as the magiſtrate, for the performance of ſuch duties, except that they are not to exerciſe the additional powers of puniſhment, which were veſted in the magiſtrates by Section XIX, Regulation IX, 1807; but are to be governed in their judgments by the reſtrictions contained in Sections VIII, and IX,

* Vide page 412.

Regulation

Regulation IX, 1793, (re-enacted for the ceded provinces by Sections VIII, and IX, Regulation VI, 1803,) with the following modifications. In the cases of petty offences, such as abusiv,e language, calumny, aud inconsiderable assaults or affrays, provided for by the first of these Sections, if it appear proper to impose the fine thereby authorized, in addition to fifteen days imprisonment, both the stated fine and imprisonment may be adjudged; with an eventual commutation of the fine, if not paid, to further imprisonment, for a period of fifteen days; making the entire term of imprisonment, if the fine be not paid, one month of thirty days. In like manner, in charges of petty thefts, provided for by the section last mentioned, if it appear just and requisite, on consideration of the circumstances of the case, to sentence the offender to one month's imprisonment, in addition to the stated corporal punishment of thirty rattans, or of any part thereof, both corporal punishment and imprisonment may be adjudged accordingly. In any case referred to an assistant, wherein the offence proved against the prisoner may appear to require a more severe punishment than he is authorized to adjudge, he is not to pass any sentence; but is to submit his proceedings to the magistrate; who, after holding any further proceedings he may deem necessary, will, if satisfied of the guilt of the prisoner, either pass sentence; upon him, or commit or hold him to bail for trial before the court of circuit, according to the nature and circumstances of the case. Whenever a complaint, or charge, of a criminal nature, is referred by a magistrate to his assistant, the order of reference is to be recorded on the magistrate's proceedings, with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision; or whether the determination upon the charge is to be passed, by the assistant, if it be such as he is authorized to determine, under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings, held by

Assistant how to proceed, if the case appear to require a more severe punishment than what he is authorized to adjudge.

R. IX, 1807, § XXI. In what manner the magistrate is to refer criminal charges to his assistant, and in what cases, to examine, or revise, the proceedings held by his assistant.

their

their aſſiſtants in ſuch caſes, and to paſs judgment thereupon themſelves; and in all inſtances, wherein the ſentence may be paſſed by an aſſiſtant, if the magiſtrate, on repreſentation made to him, without unneceſſary delay, ſhall ſee cauſe to reviſe the proceedings held by the aſſiſtant, and ſhall diſapprove the judgment given by the latter, he is authorized and required to annul the ſame, and to paſs ſuch further ſentence, or order, as may appear juſt and conformable to the regulations. The collector of the tax on pilgrims, at the temple of Juggurnauth, is declared to be, ex-officio, aſſiſtant to the magiſtrate of zillah Cuttack; and competent to exerciſe all the powers veſted in the head aſſiſtants to the zillah and city magiſtrates. The perſon, by whom theſe powers may be exerciſed, is required at all times to give every attention to the religious opinions of the Hindoos, and to the particular inſtitutions of the temple of Juggurnauth, which may be conſiſtent with the general regulations; and with the maintenance of peace and good order at the temple, and in its vicinity; and he ſhall on no account ſuffer his peons or miniſterial officers to enter the precincts of the temple when employed in ſerving proceſs, or in the execution of any other duty entruſted to them, as officers of police.

R. IV, 1803, § XI.
R. V, 1806, § IV.
Collector of the tax on pilgrims, at Juggurnauth, declared aſſiſtant to the magiſtrate of Cuttack, and veſted with the powers of aſſiſtants to zillah and city magiſtrates.

If any aſſiſtant to a magiſtrate be guilty of neglect, or miſconduct, in the diſcharge of his duty (other than corruption or extortion for which a diſtinct mode of proceeding is eſtabliſhed) the magiſtrate is enjoined to report the ſame to the court of Nizamut Adawlut. In like manner the courts of circuit are directed to report to the Nizamut Adawlut every inſtance in which it ſhall appear to them that the magiſtrates have been guilty of neglect or miſconduct in the diſcharge of their duty: as well as whenever the magiſtrates may omit or refuſe to obey their orders. In the firſt part of this Analyſis,* it was ſtated that the miniſterial officers of the civil and

R. VIII, 1793, extended to the towns, by R. XII, 1803, and recapitulated, with ſome additional provisions by R. XII, 1814, § XIII.
Neglect or miſconduct of aſſiſtants to magiſtrates to be reported to the Nizamut Adawlut.
R. IX, 1793, § LXIII, re-enacted (with added provisions) by R. [illegible] 1803, § [illegible]
[illegible] 1822, § XIV.
C. P. R. VIII, 1814, § LXIV.
Courts of cir-

* Page 169.

criminal

criminal courts (including the regiſters and aſſiſtants) had been declared amenable to the courts, to which they are reſpectively attached, for acts of corruption or extortion. The mode of proceeding to be obſerved by the provincial courts, on charges of corruption againſt the judges of the zillah or city courts,* and by the Sudder Dewanny Adawlut on a charge of corruption againſt any provincial, zillah, or city judge, was alſo ſpecified.† But by Sections II and III, of Regulation X, 1806, ſince enacted, the former proviſions, relative to ſuch charges, have been reſcinded; and the following rules have been eſtabliſhed by the ſubſequent ſections of that regulation; extending to the Judicial Department ſuch parts of Regulation VIII, 1806,‡ as are applicable to charges, or information, againſt the European public officers employed in that department.

Court of circuit to report neglect or miſconduct of magiſtrates

Rules before ſtated relative to charges of corruption, or extortion, againſt miniſterial officers of civil and criminal courts.

Reſcinded by R. X, 1806, § II, III.

"WHENEVER a charge of corruption, embezzlement, or other high miſdemeanor, as deſcribed in Section IV, Regu-

R. X, 1806, § IV.

* Page 122. † Page 133.

‡ The title of this regulation is "to amend the exiſting rules for receiving complaints in the city, and zillah civil courts, againſt collectors of the land revenue and cuſtoms, commercial reſidents, and other European public officers, declared amenable to thoſe courts, for acts done in their official capacity, in oppoſition to any publiſhed regulation; and to make further proviſion for a ſpecial enquiry, in certain caſes of charge, or information, againſt any ſuch officers." The grounds of this regulation are very fully ſtated in the preamble to it. One object of it was, to diſtinguiſh more certainly public ſuits againſt government for authorized acts, in the performance of which the collectors and other public officers are not perſonally reſponſible; from perſonal actions againſt the officers of government, for unauthorized acts, which render them anſwerable individually. But the principal object is that, "when an accuſation is preferred to any of the courts of judicature, authorized to receive the ſame, or information is given to the Governor General in Council, of corruption, embezzlement, or other groſs malverſation, breach of truſt, or high miſdemeanor, by a public officer, an immediate inquiry ſhould be inſtituted, for the purpoſe of aſcertaining whether ſuch accuſation, or information be founded, or otherwiſe; in order that, in the former caſe, government may be enabled to judge, whether ſuch officer deſerve to be any longer continued in the employment of the Company; and that, in caſes which may appear to require it, the proviſions of the law may be carried into effect by a public proſecution in the Supreme Court of Judicature; or if the charge ſhall appear to be unfounded, that juſtice may be done to the character of the accuſed."

lation VIII. 1806, againſt the regiſter, or aſſiſtant to the regiſter, of any zillah or city court, or againſt an aſſiſtant to the magiſtrate of any zillah or city, may be preferred to the judge of ſuch zillah or city, or to the provincial court of the diviſion in which ſuch zillah or city may be ſituated; or to the court of Sudder Dewanny Adawlut; and whenever any ſuch charge againſt the judge or aſſiſtant judge, or the magiſtrate of a zillah or city, or againſt the regiſter, or aſſiſtant to the regiſter, of any provincial court of appeal and circuit, may be preferred to the provincial court, having authority over the judge, magiſtrate, or other officer ſo accuſed; or to the court of Sudder Dewanny Adawlut; and whenever any ſuch charge againſt the judge of a provincial court of appeal and circuit, or againſt the regiſter, deputy regiſter, or any aſſiſtant to the regiſter, of the courts of Sudder Dewanny Adawlut and Nizamut Adawlut, may be preferred to the court of Sudder Dewanny Adawlut; the judge or judges of the court receiving any ſuch charge, ſhall immediately tranſmit the ſame (with an Engliſh tranſlation, if preferred in any of the country languages) for the information and orders of the Governor General in Council."

Charges of corruption, embezzlement or other high miſdemeanors againſt public officers in the judicial department, to be tranſmitted in the firſt inſtance, to Governor General in Council.

Section V. What proceedings will be held by Governor General in Council on receipt of ſuch charges, or information.

"ON the receipt of any charge tranſmitted to the Governor General in Council under the preceding ſection, as well as in all caſes when a charge, or public information, of the nature therein deſcribed, againſt any covenanted ſervant of the company employed in the judicial department, may be communicated directly to the Governor General in Council; he will call for any explanation, or cauſe any general previous inquiry to be made, which he may deem proper, on conſideration of the nature and circumſtances of the caſe. If on receipt of ſuch information it ſhall appear to the Governor General in Council to be neceſſary and proper, either from the importance or nature of the charge, to cauſe a further inquiry to be made, he will refer the charge for inveſtigation to any of the eſtabliſhed courts of judicature, or to a ſpecial commiſſion, conſiſting of

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one or more of the judges of thoſe courts, or any other perſon or perſons whom he may judge it expedient to appoint for the purpoſe."

Section VI. Oath to be taken by ſpecial commiſſioners appointed to inveſtigate ſuch charges.

"WHEN a charge, received under this regulation, may be referred for inquiry to any ſpecial commiſſion, not being one of the eſtabliſhed courts of judicature, the commiſſioner, or commiſſioners, previouſly to entering upon the performance of the duty committed to him or them, ſhall take and ſubſcribe before ſuch perſon or court, as the Governor General in Council direct to adminiſter it, the oath preſcribed in Section VI, Regulation VIII, 1806."

Section VII. What proviſions of Regulation VIII, 1806, applicable to inquiry in ſuch charges.

"THE proviſions contained in Sections VII, VIII, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX, of Regulation VIII, 1806, ſhall alſo be applied to the inveſtigation of any charges referred for inquiry by the Governor General in Council, under the preſent regulation."

Section VIII. In what caſes the officer accuſed is to be ſuſpended from his ſtation, and from receipt of allowances attached thereto.

"WHENEVER a charge may be referred for inveſtigation, after the general previous enquiry mentioned in Section V, of this Regulation, either to any of the eſtabliſhed courts of judicature, or to a ſpecial commiſſion, the officer accuſed ſhall be ſuſpended from the diſcharge of the functions of his ſtation, and he ſhall, at the ſame time, be ſuſpended from the receipt of the ſalary and allowances attached to ſuch ſtation. But if the charge be found, on enquiry, to have no foundation, the Governor General in Council, on reſtoring the ſuſpended officer to the exerciſe of the functions of his ſtation, will order payment of the whole of his ſalary and allowances, from the date of his ſuſpenſion, in the manner as if it had never taken place."

But ſuſpended allowances to be paid if the charge have no foundation.

Section IX. By whom the proſecution of charges referred

"WHEN a charge may be referred for inquiry under this regulation, the Governor General in Council will determine, whether

For inquiry under this regulation it is to be conducted.

whether the conduct of the profecution ſhall be left to the accuſer; or be undertaken on the part of government. In the latter caſe, the Governor General in Council will appoint a committee, conſiſting of ſuch of the public officers at the preſidency, as he may judge proper, to digeſt and prepare the charge or charges, from the papers received, and any further information obtainable from the accuſer, or from any other ſource; and to bring the evidence in ſupport of the accuſation in due order before the court or commiſſion. The Governor General in Council will at the ſame time nominate either the regiſter of the provincial, zillah, or city court, where the enquiry is to be made, or ſuch other perſon as may be deemed proper, to conduct the proceedings on the part of the profecution, under the orders of the ſaid committee, with the aid of the vakeel of government. The perſon or perſons, by whom the charge or information ſhall have been exhibited, may alſo be examined upon oath, on the part of the profecution."

Section X. Security for profecution of charges not to be demanded in the firſt inſtance. But may be required, if neceſſary, at any time in the courſe of the inquiry.

This proviſion extended to charges againſt officers in revenue and commercial departments, referred for inquiry under Regulation VIII, 1806.

And to charges of corruption and extortion againſt law officers, and native miniſterial officers, under R. XII, and XIII, 1793, and C. P. R. XI, and XII, 1803.

"SECURITY ſhall not be demanded in the firſt inſtance for the profecution of any charge received under this regulation. But in the event of its appearing neceſſary, at any time in the courſe of the inquiry, ſufficient hazirzamin y ſecurity may be required from the accuſer, to attend and profecute the charge to a concluſion. This proviſion ſhall alſo be conſidered applicable to charges againſt the public officers of the revenue and commercial departments referred for ſpecial inquiry under Regulation VIII, 1806; as well as to charges of corruption and extortion againſt the Hindoo and Mahomedan law officers, and the native miniſterial officers, of the civil and criminal courts, in qualification of the rules contained in Regulations XII and XIII, 1793, and Regulations XI and XII, 1803, whereby ſecurity is required for the profecution of a charge of corruption or extortion againſt any ſuch officer, previouſly to the charge being received."

R. IX, 1793, § XXXI. to XXXIX. R. R. XVI, 1795, § V. to XII. C. P. R. VII, 1803, § II, to X. Number and conſtitution of the courts of circuit.

THERE are ſix courts of circuit, each conſiſting of the three judges who compoſe the provincial court of appeal, and of the cauzy and mooſty attached to that court. The regiſters and aſſiſtants to the provincial courts are likewiſe regiſters and aſſiſtants to the court of circuit. And the ſame native officers are attached to both courts. A diſtinct form of oath is preſcribed to be taken by the judges, regiſters, aſſiſtants and law officers of the courts of circuit; and the latter are required to take a retroſpective oath, every ſix months, viz. on the 1ſt January and 1ſt July, of each year, for the reaſons before ſtated, with reſpect to a ſimilar requiſition from Mahomedan pleaders.* The pundit of the Benares provincial court has alſo been ſpecially attached to the court of circuit of that diviſion, for the purpoſe of expounding the Shaſter in caſes of dhurna and other matters connected with the Hindoo law. The following zillah and city juriſdictions are included in the diviſion of each court of circuit; and numbered in the order, wherein the jail deliveries are directed to be held by the rules now in force; excepting the four cities of Dacca, Moorſhedabad, Patna and Benares, and zillah Bareilly, of which the jail-delivery is held monthly; and the zillah of the 24-Pergunnahs, contiguous to the ſtation of the Calcutta court of circuit, the jail-delivery of which is held quarterly;† by one of the judges at the ſudder ſtation.

R. XI, 1795, § III.

CALCUTTA DIVISION.

R. I, 1806, § IV. Calcutta diviſion.

1. Burdwan. 2. Jungle Mehals. 3. Midnapore. 4. Cuttack. 5. Jeſſore. 6. Nuddea. 7. Hooghly. 8. Foreign Settlements of Chinſurah, Chandernagore and Serampore. 9. 24-Pergunnahs.

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* Page 148.

† The jail-delivery of zillah Dacca Jelalpore was alſo held quarterly, in purſuance of Section IV, Regulation II, 1804, whilſt the magiſtrate of that zillah reſided at Dacca. But the ſtation having been recently ordered to be removed from that city, the jail-deliveries will hereafter be held half-yearly as provided by Section III, Regulation VII, 1797.

DACCA DIVISION.

R. III, 1793, § VI. Dacca division.

1. Mymenſing. 2. Sylhet. 3. Tipperah. 4. Chittagong. 5. Backergunge. 6. Dacca Jelalpore. 7. City of Dacca.

MOORSHEDABAD DIVISION.

R. I, 1806, § IV. Moorſhedabad diviſion.

1. Bhagulpore. 2. Purnea. 3. Dinagepore. 4. Rungpore 5. Rajeſhahy. 6. Beerbhoom. 7. City of Moorſhedabad.

PATNA DIVISION.

R. II, 1804, § VIII. Patna diviſion.

1. Ramghur. 2. Behar. 3. Tirhoot. 4. Sarun. 5. Shahabad. 6. City of Patna.

BENARES DIVISION.

R. I, 1806, § V. Benares diviſion.

1. Mirzapore. 2. Allahabad. 3. Bundlecund. 4. Juanpore. 5. Goruckpore. 6. City of Benares.

BAREILLY DIVISION.

R. I, 1806, § V. Bareilly diviſion.

1. Cawnpore. 2. Furruckabad. 3. Etawah. 4. Agra. 5. Allyghur. 6. South Saharunpore. 7. North Saharunpore. 8. Moradabad. 9. Bareilly.

R. II, 1799. Preamble. Reaſons for a monthly jail-delivery in the cities of Dacca, Moorſhedabad, Patna, and Benares, and in the town and zillah of Bareilly. Alſo for a quarterly jail-delivery in the 24 Purgunnahs.

THE jail-deliveries of the four principal cities were ordered to be held monthly, partly in conſideration of the convenience of the proſecutors and witneſſes, who in the cities are frequently foreign merchants; or other ſtrangers, who could not wait the period of a half yearly ſeſſion without injury to their private concerns. The facility ariſing from one or more of the judges of circuit being always upon the ſpot, and the propriety of all perſons, charged with criminal offences, being brought to trial as ſoon as circumſtances admit, muſt alſo have influenced the adoption of this meaſure; and an extenſion of it to the town and zillah of Bareilly, at which place the judges of circuit for that diviſion reſide, as well as the rule for a quarterly jail delivery in the Months of March, June, September and December, for the

C. P. R. VIII, 1803, § XIV.

R. II, 1804, § IV.

the 24 Pergunnahs, the place of reſidence of the judges of the Calcutta Court of Circuit. The jail deliveries of the other zillahs are held half yearly; and the following periods are fixed for the commencement of each circuit, with reference to the ſtate of the country, and the convenience of travelling, at different ſeaſons of the year. In the Dacca, Benares and Bareilly diviſions on the 1ſt January and 1ſt July. In the Calcutta diviſion on the 1ſt April and 1ſt October. In the Moorſhedabad diviſion, on the 1ſt March and 1ſt September. In the Patna diviſion, on the 1ſt June and 1ſt December. Theſe periods, and the fixed order of ſucceſſion in holding the jail deliveries, (which was eſtabliſhed to obviate the hardſhip ſuſtained by particular priſoners, when the jail deliveries were held at unequal periods, and without any certain order of ſucceſſion) are not to be deviated from by the courts of circuit, without the ſanction of the Nizamut Adawlut; unleſs the periods fixed for commencing the circuit happen to fall within the Duſſarah, or Mohurrum, vacation, * in which caſe the commencement of the circuit is to be poſtponed until the expiration of the vacation; or as long as the magiſtrate of the zillah, where the firſt jail delivery is to be held, may, on a reference from the court of circuit, ſtate to be neceſſary on this account. By Section XLI, Regulation IX, 1793, the judges of circuit, in each diviſion, were ordered to form two courts, to proceed upon the circuits; one conſiſting of the firſt judge, accompanied by the regiſter and moofty; the other of the ſecond and third judges, attended by the ſenior aſſiſtant and cauzy. The provincial court being conſequently ſhut during the abſence of the judges, and much inconvenience to the parties in civil cauſes ariſing therefrom, it was provided by Regulation VII, 1794, that two of the judges ſhould hold the two courts of circuit, whilſt the third ſhould remain, in rotation, at the ſudder ſtation, to carry on the current buſineſs of the civil court. Two judges however being requiſite to form a court for the

Jail-deliveries of the other zillahs to be held half-yearly, and at what periods.
R. IX, 1793, § XL.
B. R. XVI, 1795, § XIII.
C. P. R. VII, 1803, § XI.
R. III, 1797, § III.
R. II, 1804, § III.
And preamble.
C. P. R. VII, 1803, § XI.

R. III. 1798. Preamble. And Sections IV, VI.
C. P. R. VIII, 1805, § XIV.
R. I, 1806, § VI.
Fixed periods and ſucceſſion of jail-deliveries not to be deviated from, without ſanction of the Nizamut Adawlut. Proviſion, when the period for commencing the circuit may fall within either of the annual vacations.

R. IX, 1793, § XLI.
Original rule for conſtituting two courts to proceed upon the circuit.

R. VII, 1794, § II, III, IV.
Subſequent rule, by which one judge was left at the ſudder ſtation.

Preamble to

† Noticed in page 173.

trial

Regulation III 1797. Neceſſity of further proviſion for enabling two judges to ſit in the court of appeal.

trial of appeals, and the period during which that number could ſit together, whilſt two of the three judges were obliged to go upon the circuit half-yearly, being found inſufficient for the deciſion of the appeals preferred; it was neceſſary to make further proviſion for this purpoſe. It was therefore enacted by Regulation III, 1797, that inſtead of two judges of circuit holding the jail deliveries of each diviſion at the ſame time, one judge only ſhould proceed upon the circuit; and it being deemed expedient that the ſenior judge ſhould always continue at the ſudder ſtation, the ſecond and third judges, in rotation, were ordered to hold the half-yearly jail-deliveries, attended by the cauzy and mooſty, alternately. This rule is ſtill in force as far as reſpects the jail-deliveries being held before a ſingle judge of the court of circuit, attended by the cauzy or mooſty. But there not appearing to be ſufficient reaſon for continuing the exemption of the ſenior judges from proceeding upon the circuits, whilſt advantage to the public ſervice, as well as convenience to the other judges of the courts of circuit, might be expected from their being occaſionally employed on this duty; the following proviſion has been made by Section VIII, Regulation I, 1806.

R. III, 1797, § II. C. P. R. VII, 1803, § XII. Rule for ſecond and third judges to proceed alternately on the circuit. And for the conſtant reſidence of the ſenior judge at the ſudder ſtation.

R. I. 1806, § VIII. Part of above rule reſcinded. All ſenior judges to proceed on the circuit, in rotation, unleſs prevented by illneſs, or other ſubſtantial cauſe.

"Such parts of Regulation III, 1797, of Regulation VII, 1803, and of any other regulation now in force, as require that the ſenior judges of the courts of circuit and appeal ſhall always remain at the ſudder ſtation, are hereby reſcinded. The ſenior judge of each diviſion ſhall in future proceed in rotation on the circuit for the purpoſe of holding the half-yearly jail-deliveries at the ſeveral ſtations, within the juriſdiction of the court to which he is attached, in common with the other judges of that court, unleſs he ſhall be prevented by indiſpoſition or other ſubſtantial cauſe; when the Governor General in Council, on receiving the neceſſary information on the ſubject through the Nizamut Adawlut, will order one of the other judges to proceed on the circuit, or will make ſuch other proviſion for

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the diſcharge of that duty, as may appear to be moſt expedient. In like manner the monthly jail-deliveries of the cities of Dacca, Moorſhedabad, Patna, and Benares, and of the zillah of Bareilly, and the quarterly jail deliveries of the zillahs of Dacca Jelalpore and the twenty-four Pergunnahs, ſhall be holden ſucceſſively by the different judges, including the ſenior judge, who may be preſent at the ſudder ſtation; unleſs the judge, whoſe turn it may be under this rule to hold the ſeſſion, ſhall be prevented from the performance of that duty by indiſpoſition or other cauſe, in which caſe it ſhall be competent for the Nizamut Adawlut to order the ſeſſion to be holden by the other judge who may be preſent at the ſudder ſtation; or, if more than two judges ſhall be at the ſudder ſtation, by whichever of thoſe judges the Nizamut Adawlut may think proper to direct. It is further provided by the regulation above cited, that "it ſhall be competent to the court of Nizamut Adawlut, on information in any particular inſtance, that no perſon has been committed by a zillah or city magiſtrate for trial before the court of circuit, at the period for holding the jail delivery of ſuch zillah or city, to poſtpone the ſeſſion of the court of circuit for ſuch zillah or city, till the period fixed by the regulations for the next enſuing jail delivery. And in like manner, whenever the number of perſons committed, or held to bail, for trial before the court of circuit, at any particular ſtation, ſhall be inconſiderable, and the concluſion of the circuit may be materially expedited by bringing ſuch perſons to trial at another contiguous ſtation; or generally, when any ſpecial cauſe ſhall appear to render it expedient that the perſons committed, or held to bail, by any particular magiſtrate, ſhould be brought to trial at the ſeſſion of the court of circuit held in the adjacent juriſdiction of another magiſtrate; it ſhall be competent to the Nizamut Adawlut, or to the Governor General in Council, to authorize and direct, that the perſons committed, or held to bail, in ſuch inſtances, be brought to trial before the court of circuit at the ſtation which may appear to be moſt convenient. In ſuch

Alſo to hold in turn, the monthly and quarterly jail-deliveries.

Proviſion for indiſpoſition, or other cauſe of prevention.

In what caſe the Nizamut Adawlut may poſtpone the jail delivery of any zillah or city, or direct it to be held at the ſtation of a contiguous juriſdiction. R. I, 1806, § VII.

caſes the proceedings of the magiſtrate by whom the priſoners may have been committed, or held to bail, ſhall be tranſmitted with the priſoners to the magiſtrate of the juriſdiction in which the ſeſſion of the court of circuit may be held; and the latter magiſtrate ſhall perform the duties preſcribed by the regulations, in bringing the priſoners, and proceedings, before the court of circuit, as well as in executing any orders of that court which the judge may deem it proper to direct to him, in preference to the magiſtrate by whom the priſoners ſhall have been committed, or held to bail.

R. III, 1797, § VI.
C. P. R. VII, 1803, § XIV. Notice to be given to the Governor General in Council, when the judge, whoſe turn it may be to proceed upon the circuit, is unable to perform it.
R. IV, 1797, § VIII.
C. P. R. VII, 1803, § XXIV. Proviſion for non-attendance of the law officer of the court of circuit from ſickneſs or other cauſe.
R. VII, 1794, § IX, confirmed by § VI, R. II, 1804.
R. R. XVI, 1795, § XIX.
C. P. R. VIII, 1805, § XIV. The courts of circuit reſtricted from ſitting upon Sundays.
R. II, 1793, § II.
R. II, 1804, § IV, V.
C. P. R. VIII, 1805, § XIV. And to hold the monthly and quarterly jail-deliveries, on days when the court of appeal does not ſit.
R. IX, 1793, § XI.
R. R. XVI, 1795, § XIII.
C. P. R. VII, 1803, § XI. Judge of circuit holding the half

In caſe of the death of the judge, whoſe turn it may be to proceed upon the circuit; or of his inability to perform the circuit, from ſickneſs, or any other unavoidable impediment; the earlieſt notice is to be given to the Governor General in Council; who will make ſuch proviſion for the caſe as he ſhall judge adviſable. If, at any time, the law officer of the court of circuit be prevented by indiſpoſition, or otherwiſe, from attending that court, whilſt ſitting at any zillah or city ſtation, the Mahomedan law officer of the zillah or city court, at ſuch ſtation, is to officiate for him, as long as may be neceſſary, on ſuch occaſions. The whole of the courts of circuit are reſtricted from ſitting upon Sundays on any occaſion whatever; and the monthly jail deliveries of the four cities, and zillah Bareilly, as well as the quarterly jail delivery of the 24 Purgunnahs, are ordered to be held on the days when the court of appeal may not ſit; or in ſuch manner as may occaſion the leaſt poſſible impediment to the buſineſs of that court.

The judge of circuit holding the half-yearly jail-deliveries is directed to proceed to the place of reſidence of the magiſtrate of each zillah within the diviſion: and, unleſs it be found indiſpenſably neceſſary, from the non-attendance of any material evidence, or other ſufficient cauſe, to poſtpone any trial till a future ſeſſion, to remain at ſuch ſtation, until all priſoners committed,

committed, or held to bail, by the magiſtrate, for trial, ſhall have been tried, and ſentence paſſed upon them, or their trials referred for the ſentence of the Nizamut Adawlut.* The proceedings on the trial of priſoners, before the courts of circuit, are ordered to be conducted in the following manner:—" The charge againſt the priſoner, his confeſſion (which is always to be received with circumſpection and tenderneſs) if he plead guilty, or, if he plead not guilty, the evidence on the part of the proſecutor, the priſoner's defence, and any evidence which he may have to adduce, being all heard before him, the cauzy or mufty, (who is to be preſent during the whole of the trial) is to write at the end of the record of the proceedings the futwa (or expoſition of the Mahomedan law) applicable to the circumſtances of the caſe, and to atteſt it with his ſeal and ſignature." If the futwa of the law officers acquit the priſoner, and the judge, after attentively conſidering the evidence and circumſtances of the caſe, concur in ſuch acquittal; or if the futwa declare the priſoner to be convicted of the charge, or of any part of it, and the judge, on due conſideration, concur in ſuch conviction, and be empowered by the regulations to paſs a final ſentence on the caſe, without reference to the Nizamut Adawlut; he is to paſs ſentence accordingly; and to iſſue his warrant to the magiſtrate for the execution of it. If the judge of circuit diſapprove the futwa given by his law officer, and have not been expreſsly authorized by any regulation to paſs ſentence, notwithſtanding ſuch futwa, either for the puniſhment of the priſoner, or for his acquittal and diſcharge, with or without ſecurity; or if the priſoner be duly convicted, and

yearly jail deliveries, where to proceed, and how long to remain at each ſtation.

Proceedings on trials before courts of circuit how to be conducted.
R. IX, 1793, § XLVII.
Extended to Benares by R. XVI, 1795.
C. P. R. VII, 1803, § XV.

In what caſes the judge of circuit is to paſs a final ſentence, and iſſue his warrant to the magiſtrate for the execution of it.

R. LIII, 1803, § VI.
In what caſes the proceedings upon the trial are to be referred to the Nizamut Adawlut.

* A queſtion having been ſubmitted to the Nizamut Adawlut, whether a priſoner committed by the magiſtrate, after the arrival of the court of circuit at his ſtation, ſhould be tried at the ſeſſion of the court of circuit then depending; or at the enſuing ſeſſion; the court, by a circular letter from their regiſter, dated the 30th November 1796, expreſſed their opinion that " provided the witneſſes are in attendance, and the trial is in every reſpect ready to be brought before the court of circuit, it ſhould be immediately proceeded upon, in humanity to the priſoner, who muſt otherwiſe be kept in confinement till the enſuing jail-delivery."

liable

liable to a ſentence of perpetual impriſonment or death; the proceedings upon the trial are to be referred for the ſentence of the Nizamut Adawlut. In ſuch caſes, viz. in all trials referrible to the Nizamut Adawlut, it is directed that "if the judge of circuit diſapprove the futwa given by his law officer; or if the priſoner or priſoners convicted, or any of the priſoners convicted in the ſame trial, be liable to a ſentence of death; the judge ſhall not paſs any ſentence (except for the acquittal and diſcharge of any priſoners not convicted); but ſhall tranſmit the trial, with his opinion thereupon, for the ſentence of the Nizamut Adawlut. If the judge of circuit concur with his law officer in the conviction of the priſoner, or priſoners, and none of them be liable to a ſentence of death, the judge ſhall paſs ſentence on the priſoner or priſoners ſo convicted. But ſuch ſentences, in all trials referrible to the Nizamut Adawlut, ſhall not be deemed final, nor ſhall any warrant be iſſued for carrying the ſame into execution, until they be confirmed by the court of Nizamut Adawlut. Moreover, whenever the trial of a principal in any crime may be referred for the ſentence or confirmation of the Nizamut Adawlut, and an accomplice in the ſame crime ſhall have been brought to trial and convicted, at the ſame time with the principal; the courts of circuit ſhall not carry into execution their ſentence upon the accomplice ſo convicted; but ſhall wait the confirmation or final ſentence, of the Nizamut Adawlut, as well reſpecting the accomplice, as the principal. Provided, however, that this reſtriction be not underſtood to prevent the judges of the courts of circuit from paſſing a final ſentence of acquittal upon any priſoners charged as accomplices, whom they may acquit of ſuch charge, in concurrence with their law officers; or from directing the releaſe of any priſoners ſo acquitted, notwithſtanding the reference of the trial of the principal to the court of Nizamut Adawlut." It is further directed that "whenever the judges of circuit may refer to the Nizamut Adawlut the trial of a priſoner or priſoners, whom they may conſider pro-

And judge of circuit when to paſs ſentence, or not, in ſuch caſes.

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per objects of capital punishment, under the Second Clause of Section IV, Regulation LIII, 1803, (declaring the penalties of robbery by open violence) or of imprisonment for life under the third clause of that Section;* or of a mitigation of punishment under the fifth clause; or of an extension, mitigation, or remission of punishment in any case whatever; they shall be careful to notice the same in their letters, accompanying the trials referred; and shall state at large the grounds of their judgment whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner, whose punishment is proposed to be extended, mitigated or remitted."

THE judges of the courts of circuit are ordered to refer to the Mahomedan law officers of their respective courts all

R. IX, 1793, § LIII, LIV. Extended to Benares by R.

* The clauses referred to, of Section IV, Regulation LIII, 1803, have been quoted, at length, in pages 388, 389. But since those pages were written and printed, a new regulation has been passed (VIII, 1808,) declaring all persons convicted of robbery by open violence and not liable to a sentence of death, subject to imprisonment and transportation for life. The object of this regulation, as stated in the preamble, is, to prevent persons convicted of robbery, of whose amendment no hope can be entertained from their confirmed habits and principles, from being set at liberty, at the expiration of a limited period, to join their former associates and renew their depredations. By the second section of it the Third Clause of Section IV, Regulation LIII, 1803, is prospectively rescinded. And the following rule is substituted for it by Section III. "All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in Section III, Regulation LIII, 1803, and who may not, under the regulations in force, be liable to a sentence of death, shall be adjudged by the courts of circuit, and by the court of Nizamut Adawlut, to receive thirty-nine lashes with a corah, and to be imprisoned and transported for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe; in which case the court of Nizamut Adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court, by Clause Fifth of Section IV, Regulation LIII, 1803; or to act in pursuance of clause sixth of that section, if the prisoner appear a proper object of mercy and pardon." It is further declared by Section IX, Regulation VIII, 1808, that "persons convicted of going forth with a gang of robbers, for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under Clause Fourth, of Section IV, Regulation LIII, 1803, shall previously to their release from confinement be required to give substantial security for their future good conduct."

XVI, 1793. Re-enacted for C. P. by § XXII. XXIII, R. VII, 1803. Courts of circuit to refer all questions of law to their Mahomedan law officers; and to be guided by their opinions. Provision in cases they shall not concur in such opinions.

queſtions on points of law, that may ariſe in the courſe of any trial, and reſpecting which no ſpecific rules may have been enacted by the Governor General in Council. If the opinions delivered by the law officers appear contrary to the principles of juſtice, or to the proviſions of the Mahomedan law, the judges are nevertheleſs to be guided by them; but after completing the trial, and obtaining the futwa of the law officer preſent thereupon, are, without paſſing ſentence, to tranſmit the proceedings and futwa to the Nizamut Adawlut; with a letter, ſtating their objections, for the conſideration and ſentence of that court.

R. IX, 1793, § XLVIII, XLIX. R. I, 1803, § II, III. C. P. R. VII, 1803, § XVI, XVII, and R. VIII, 1803, § XXV. Further rule of proceeding relative to trials before the court of circuit.

The proſecutor in trials before the court of circuit may be examined under a ſolemn declaration, if he be of the deſcription of perſons exempted from taking an oath; and is allowed the option of carrying on the proſecution in perſon, or by a vakeel duly appointed, excepting caſes in which the Mahomedan law requires the proſecutor's appearance in perſon at the trial of the priſoner. The judge of circuit may however require the perſonal attendance of the proſecutor, in all caſes wherein his depoſition may be deemed neceſſary, as evidence upon the trial. But no Mahomedan or Hindoo women, of a rank and ſituation in life, which, according to the cuſtom and prejudices of the country, would render it improper to compel them to appear in a court of juſtice, are to be made to attend in perſon. Whenever the proſecutrix, or any witneſs upon a trial, may be a woman of this deſcription, and her evidence ſhall be deemed neceſſary, (the caſe being ſuch as to admit of its being taken by commiſſion) the judge is to depute perſons to take it in the manner preſcribed by the Mahomedan law. If the attendance of any witneſs on the part of the proſecutor or priſoner, whoſe evidence the law may not allow to be taken by commiſſion, cannot be procured; or if any witneſs cannot be found or though attending refuſe to give evidence; the judge may poſtpone the trial until

til the next circuit, if there appear to be ſufficient cauſe for ſo doing. If the attendance, or evidence, of ſuch witneſs cannot then be obtained, the judge of circuit may, in like manner, poſtpone the trial a ſecond time. But if the judge and law officer be of opinion that the evidence of any ſuch witneſs is not neceſſary, the trial is to be completed without it. The judges of circuit are expected however, in every inſtance, to make ſuch inquiry as may be neceſſary to ſatisfy themſelves, and the court of Nizamut Adawlut in caſes referrible to that court, that all due meaſures have been taken to cauſe the attendance of the whole of the witneſſes, both on the part of the proſecutor and the priſoner. In the examination of witneſſes, the courts of circuit are required to obſerve the rules already ſtated with reſpect to witneſſes examined by the magiſtrates. They are further directed to be careful to notice on their proceedings any material differences between the depoſitions of the ſame witneſſes before them and the magiſtrates; and are to queſtion the witneſſes thereupon and record their anſwers. But the depoſitions taken before the magiſtrates are not to be read before the court of circuit in the preſence of the deponents, until they ſhall have been re-examined before the court of circuit. This court, as before obſerved, has the ſame power as the civil courts, of puniſhing, by fine and impriſonment, any witneſs duly ſummoned, who may not attend, or though attending, may refuſe to give evidence and ſign his depoſition. The courts of circuit are further empowered to direct the magiſtrate to inflict corporal puniſhment with a rattan, not exceeding fifteen ſtrokes, or impriſonment for any term not longer than fifteen days,* upon any perſon guilty of contempt of court in open court.

R. IX, 1796, § IV.
C. P. R. VI, 1803, § XIV.

R. IV, 1797, § VII.
C. P. R. VII, 1803, § XVIII.

R. I. 1803, § II.
C. P. R. VIII, 1808, § XXV.
Power veſted in courts of circuit to puniſh witneſſes not attending, or refuſing to give evidence.
R. IX, 1793, § LIX.
Extended to Benares by R. XVI, 1795.
C. P. R. VII, 1803, § XXVIII.
Alſo empowered to order fine

* The period of impriſonment in the rule for the ceded provinces (Section XXVIII, Regulation VII, 1803,) is four months. But as the remainder of the ſection is taken *verbatim* from Section LIX, Regulation IX, 1793, which is ſtill in force for Bengal, Behar, Oriſſa, and Benares, this variation is preſumed to have been accidental.

As

ishment for any contempt of court. R. X, 1799. § II.

C. P. R. VII, 1803. § XLI. Rules for guidance of the courts of circuit in transmitting their proceedings on trials referrible to the Nizamut Adawlut.

As ſoon as poſſible after the cloſe of any trial referrible to the Nizamut Adawlut, and with no further delay than may be neceſſary to tranſcribe the proceedings held thereupon, the courts of circuit are required to tranſmit to the Nizamut Adawlut a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to ſuch trial; with an Engliſh letter, ſtating their opinion on the evidence, and on the guilt and innocence of the priſoners. The record to be ſo tranſmitted is to be authenticated by the ſignature of the judge and ſeal of the law officer before whom the trial may have been held, and is to include the whole of the proceedings held before the court of circuit, with every examination, exhibit, or material paper of whatever denomination, taken by, or delivered to that court; and the Perſian tranſlations of all examinations taken down in any other language than the Perſian. The whole of the proceedings and papers received from the magiſtrate upon the caſe referred are alſo to be annexed to, and tranſmitted with, the proceedings of the court of circuit; but any variations between the depoſitions of the witneſſes before the magiſtrates and courts of circuit are to be carefully noticed on the proceedings of the latter, and any confeſſions of the priſoners before the magiſtrates, any inqueſt taken in caſes of homicide, or any other evidence appearing on the proceedings of the magiſtrates, are to be entered, with the neceſſary proofs, on the proceedings of the court of circuit *. The courts of circuit are fur-

R. IX, 1793. § LVIII.

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* Several inſtances having occurred of conſiderable delay in the tranſmiſſion of trials referrible to the Nizamut Adawlut, that court, with a view to the more certain attainment of the object propoſed by Regulation X, 1799, viz. the ſpeedy diſcharge, or puniſhment, of the priſoners whoſe trials are under reference, directed the ſtrict obſervance of the following inſtructions, by a circular letter addreſſed to the courts of circuit, on the 11th September 1801. The zillah and city magiſtrates were, at the ſame time, inſtructed, on the application of the judge of circuit, to afford as far as practicable the aſſiſtance of their native officers, in tranſcribing the proceedings of the court of circuit.

"The counterpart record of proceedings held before the court of circuit, required by

Section

ther directed, in the tranſmiſſion of trials to the Nizamut Adawlut to give a preference, as far as practicable, to thoſe trials in which the priſoner, or priſoners, may be liable to a ſentence of death. And the proceedings in ſuch caſes are to be tranſmitted within ten days after the trial is completed. They are alſo directed, in the tranſmiſſion of their proceedings to the Nizamut Adawlut, to be guided by ſuch forms and inſtructions as they may receive from that court. Previous to the commencement of each circuit, the courts of circuit are to examine the liſts of trials held on the preceding circuit, and referred to the Nizamut Adawlut, and in the event of their not having received the ſentence or orders of the Nizamut Adawlut, are to report the ſame to that court; that in the event of the proceedings tranſmitted, or of the ſentence or orders paſſed thereupon, having miſcarried, duplicates may be ſent, without delay. On their return from each circuit, the judges are to tranſmit to the Nizamut Adaw-

R. IV, 1797, § XIII. C. P. R. VII, 1803, § XXVII.

R. IV, 1797, § XIV. C. P. R. VII, 1803, § XXXVIII.

R. XXXVI, 1793, § VI.

Report to be made to the Nizamut Adawlut, before the commencement of each circuit, of any trials referred on the preceding circuit, or when the orders of the Nizamut Adawlut have not been received.

R. IV, 1797, § XII. C. P. R. VII, 1803, § XXXVII.

Section II, Regulation X, 1799, to be tranſmitted as ſoon as poſſible after the cloſe of any trial referrible to the Nizamut Adawlut, and with no further delay than may be neceſſary to tranſcribe the proceedings held thereupon, is to be invariably tranſmitted from the ſtation where the trial may have been held, before the judge of circuit proceeds to any other ſtation; unleſs from the number of referrible trials his detention, whilſt the record is tranſcribing, would be ſuch as materially to impede the circuit; in which caſe he is to report the ſame to the Nizamut Adawlut, with a liſt of the referrible trials; and information when the ſame will be tranſmitted reſpectively. To enable the judges of circuit to prepare the counterpart record of trials referrible to the Nizamut Adawlut, with the leaſt poſſible delay, the ſeveral zillah and city magiſtrates will be inſtructed to give the aſſiſtance of their native officers in tranſcribing the original proceedings; and the judges of circuit are authorized to employ any additional mohorirs they may find neceſſary, and be able to procure, for the ſame purpoſe, tranſmitting a contingent bill on this account for the ſanction of government. The proceedings and papers received from the magiſtrates, required by the regulation abovementioned to be tranſmitted to the Nizamut Adawlut, with trials referrible to that court, are to be tranſmitted as received from the magiſtrates; without making copies of them; and ſuch papers, after the Nizamut Adawlut ſhall have paſſed ſentence on the trial referred with them, will be returned to the judge of circuit. By theſe means, the court truſt, that the trials referrible to them will be always tranſmitted, in future, within the period of ten days, fixed by Section LXVIII, Regulation IX, 1793, as well as without any impediment to the buſineſs of the circuits. If any other meaſures ſhould appear to you advisable for either of theſe purpoſes, the court deſire you will communicate them."

Report to be made to the Nizamut Adawlut, at the close of each circuit.

but a report, containing such observations as they have made during the circuit, regarding the effect of the present system for administering the criminal laws, in the prevention and punishment of crimes; as well as respecting the state of the jails; the treatment and employment of the prisoners; and such other matters as they shall think deserving the notice of the court. But any new regulations which the judges of circuit may deem advisable, are to be prepared in the manner and form prescribed by Regulations XX, 1793, and IX, 1803.* With a view to the regular information of the Nizamut Adawlut upon the progress made in the half yearly circuits, the judges were further required by a circular order from the Nizamut Adawlut, dated the 8th October 1806, "to report to that court the dates on which they may commence and conclude the business at each station."

R. IX, 1793, § LXII. R. R. XVI, 1795, § XXIV, C. P. R. VII, 1803, § XXXII.

Judges of circuit to visit the jails at each station, and issue such orders as may appear advisable.

R. IX, 1793, § IX. C. P. R. VII, 1803, § XXIX.

The judges of circuit are to visit the jails at each station, where the half yearly jail-deliveries are held, and once in every three months, or oftener if they think proper, at the stations where monthly or quarterly jail deliveries are held; and are to issue to the magistrates such orders as may appear advisable for the better treatment and accommodation of the prisoners. The report to be made by them to the Nizamut Adawlut in cases of neglect of duty, disobedience of or-

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* See page 22 of the first part of this Analysis. Since that part was printed, the following rule, (contained in Section XXXI, Regulation VIII, 1805, for the ceded and conquered provinces, and extended to the other provinces by Section XII, Regulation XI, 1806,) has been passed for promulgating the regulations in the country languages. "On receipt of translations of the regulations in the country languages, the zillah and city judges and magistrates shall cause the same to be publicly read in their cutcherries; and shall require the native pleaders of their respective courts to take copies of the translations of any regulations which relate, directly or indirectly, to the administration of civil justice. The judges shall also cause the copies, which they are required to furnish to the cauzees stationed in the several towns and purgunnahs within their respective jurisdictions, to be read and published, for general information, at the cutcherries of the native commissioners, empowered to act as munsifs, and of the police darogahs, or tehseeldars in charge of the police.

ders,

ders, or misconduct on the part of the magistrates, has been already noticed. By Section XVII, Regulation IX, 1793, (re-enacted for the ceded provinces by Section XVII, Regulation VI, 1803,) the courts of circuit were further required to report to the Nizamut Adawlut any instances wherein, upon the examination of the proceedings held by the magistrate, any persons should appear to have been released or punished by him on insufficient grounds. In explanation of this rule, it was declared by Section V, Regulation IX, 1801, (re-enacted for the ceded provinces in the Fifth Clause of Section II, Regulation III, 1804,) that the judges of circuit are expected to examine with attention the proceedings of the magistrate in any case wherein a petition of complaint may be preferred to them at the jail delivery, next ensuing after the magistrate's decision upon the case; and to make the report directed by the above section to the court of Nizamut Adawlut, if the circumstances of the case shall appear to require it; or, if otherwise, to inform the party complaining by a written order upon his petition.* But, to save the necessity of frequent references to the Nizamut Adawlut in such cases, the judge of circuit is

Report to be made to the Nizamut Adawlut, as already noticed, in cases of neglect of duty, disobedience of orders, or other misconduct.

R. IX, 1793, § XVII.
C. P. R. VI, 1803, § XVII.

Further rule, when persons sentenced by the magistrate may appear to have been discharged or punished, on insufficient grounds.

R. IX, 1801, § II.
C. P. R. III, 1804, § II, C. 5.

Explanation of the above rule.

R. IX, 1807, § XXII. Modified.

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* Section XVII, Regulation IX, 1793, having been construed to mean that the judge on circuit is to examine and carry away the whole of the proceedings of the magistrates, in cases determined by them, and submitted to the judge of circuit, the Nizamut Adawlut informed the courts of circuit by a circular letter dated the 22d May 1804, that "it is not meant by the above section (explained by Section V, Regulation IX, 1801,) that the judge on circuit should examine and carry away the whole of the proceedings of the magistrates; but that an examination of them is only requisite in cases wherein applications may be made to the judge on circuit, or wherein it may appear to him necessary for any purpose of justice. In such cases the court are of opinion that the judge ought to inspect the proceedings and pass such orders as appear proper, or make the prescribed reference, at the station where the application may be made, provided it can be done without materially protracting the business of the circuit. But when the requisite examination of the proceedings of the magistrates in these cases would be productive of considerable detention of the circuit judge, the court are of opinion that there would be no objection to his taking the proceedings with him to the next station on the circuit; or to his keeping them for examination until his return to the sudder station; instructing the party, applying for such examination, by a written order on his petition, to attend him accordingly, for the purpose of receiving a copy of any orders which may be passed by him."

authorized

Add. Judges of circuit authorized to direct a further inquiry when requisite; and report to judges of the court of circuit collectively, instead of Nizamut Adawlut.

authorized by Section XXII, Regulation IX, 1807, in modification of the former rule above cited, whenever any case determined by a magistrate or his assistant, "may appear not to have been sufficiently investigated; and a further inquiry may be practicable, and requisite for the ends of justice; to direct such additional inquiry to be made by the magistrate, and the result to be communicated to the judges of the court of circuit, collectively, for their orders on the case; instead of reporting it in the first instance to the court of Nizamut Adawlut." By Section XXIII, of the same regulation, "two or more judges of a court of circuit, forming a court at the sudder station, are declared competent, on all occasions, when it may appear necessary, upon petitions presented to them, relative to the proceedings of any zillah or city magistrate, or of an assistant to a magistrate, within their jurisdiction, to call upon the magistrate for his proceedings, or those of his assistant, on the case; and to pass such orders thereupon as they may deem proper and consistent with the regulations." If a difference of opinion shall arise on any question, when the three judges of the court of circuit are present, the opinion of the majority is to be adopted. If two judges only are present, the senior judge has a casting voice. But the judges are required, in such cases, to record the grounds of their respective opinions upon the proceedings.

R. IX, 1807, § XXIII. General authority of two or more judges of a court of circuit, to call for and control proceedings of a zillah or city magistrate, or his assistant.

R. IX, 1793, § LXIV. C. P. R. XV, 1803, § II. Provisions for differences of opinion, when two or more judges of the court of circuit are present.

R. LIII, 1803, § XI. Authority vested in the judge of circuit to order, in certain cases, the release on mochulka, of persons confined to security by order of the courts of circuit and Nizamut Adawlut.

It remains only to mention, with regard to the judges of circuit, that they are authorized to direct the release (on execution of a mochulka or penal engagement) of any prisoner, confined by order of the Nizamut Adawlut, or courts of circuit, under requisition of security for his future good conduct and appearance; if, on the report of the magistrate, upon the prisoner's behavior during his confinement, and on due consideration of all circumstances of the case, the judge of circuit shall concur with the latter in opinion that the prisoner ought to be released. The magistrates are directed to report to the

Report to be made by the

judges

judges of circuit, at each jail-delivery, when any priſoner may have been confined a year, or more, from inability to give the ſecurity required; and the execution of a mochulka by the priſoner for his future good conduct, without ſecurity, may, on conſideration of the circumſtances of the caſe, and the priſoner's behavior during his confinement, appear ſufficient to provide for the object intended. The judges of circuit, in all inſtances of ſuch reports from the magiſtrates, are required to call the priſoner before them, and to examine the proceedings held upon his trial, as far as may be neceſſary to aſcertain the grounds on which the priſoner has been required to find ſecurity. It is further preſcribed, that both the magiſtrates and courts of circuit, in the exerciſe of the diſcretion thus veſted in them, give due conſideration to the nature of the crime, of which the priſoner may have been convicted, or ſuſpected; his general character, as far as aſcertainable; and the conſequent riſk to be apprehended from his being releaſed, without ſecurity for his future good conduct. It has likewiſe been declared by Section IX, Regulation VIII, 1808,* that "in all inſtances, wherein perſons required to give ſecurity under Clauſe Sixth of Section II, Regulation

magiſtrate in ſuch caſes.

Inquiry to be made by judge of circuit.

Caution to magiſtrates and judges of circuit in the exerciſe of the diſcretion thus veſted in them.

R. VIII, 1808, § IX.

Further proviſion made to prevent the releaſe

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* This proviſion was, in part, anticipated by the following reſolution of the Nizamut Adawlut, paſſed on the 8th Auguſt 1807, and communicated to the courts of circuit for their guidance. "The court, remarking, that ſeveral judges of circuit obſerve it as a rule to provide, in their order for requiring ſecurity, a limited period of impriſonment in the event of the priſoner's being unable to give the required ſecurity; and it appearing to the court that notorious decoits, or perſons of dangerous character, againſt whom there may be ſufficient evidence to warrant an order for not releaſing them without ſubſtantial ſecurity for good behaviour, ſhould not be releaſed until ſuch ſecurity be given, however long they may remain in cuſtody, unleſs the magiſtrate and court of circuit ſhould ſee reaſon to permit their diſcharge on mooclulka under Section II, Regulation LIII, 1803; the court deſire that the judges of circuit will in future diſtinguiſh, in their orders for ſecurity, the caſes of priſoners ordered to be ſo detained on account of ſtrong ſuſpicion of gang robbery or no oriety as decoits, from the caſes of perſons of leſs dangerous character. The order in the firſt caſe to be for detention indefinitely until ſecurity be given (ſubject of courſe to the proviſions of Section II, Regulation LIII, 1803); and orders ſpecifying a limited period of impriſonment, in commutation of the requiſition of ſecurity, to be reſtricted to caſes of the latter deſcription."

of perſons of dangerous character, without ſecurity.

LIII, 1803, or any other proviſion in the regulations, may be notorious robbers (decoits) whom it would be dangerous to ſet at liberty without ſubſtantial ſecurity for their future good conduct, the priſoner ſhall not be releaſed until ſuch ſecurity be given, to the ſatisfaction of the court of circuit, upon the report of the magiſtrate; unleſs from the priſoner's behavior during his confinement, or other circumſtance, there appear to be ſufficient ground of aſſurance to warrant his diſcharge on a mochulka, under the proviſion made for that purpoſe by Section XI, Regulation LIII, 1803.*

R. IX, 1793, § LXVI, LXVII.

Court of Nizamut Adawlut where held and how conſtituted.

THE court of Nizamut Adawlut, or ſuperior criminal court, is held at Calcutta; and was conſtituted, by Section LXVII, Regulation IX, 1793, to conſiſt of the Governor General and Members of the Supreme Council, aſſiſted by the head cauzy and two mooſties. But for the reaſons before ſtated, relative to an alteration in the conſtitution of the Sudder Dewanny

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* In concluding what relates to the powers and duties of the courts of circuit, it appears unneceſſary to offer any remark upon their utility and importance; both as providing for the regular and impartial adminiſtration of criminal juſtice, by experienced judges, who can have no bias againſt the priſoners brought to their tribunal; and as ſuperintending and controlling the conduct of the local magiſtrates within their reſpective diviſions. But it may be proper to inſert in this place the following circular letter to the magiſtrates, from the Secretary to Government in the Judicial Department, dated the 11th April 1805; and to notice that accommodation for the judges of circuit has ſince been provided at many of the zillah ſtations.

"It having been repreſented to His Excellency the Moſt Noble the Governor General in Council, that the judges of circuit have, in ſome inſtances, been expoſed to inconvenience, from want of perſonal accommodation, during their reſidence at the different ſtations for the jail-delivery; and His Excellency in Council being of opinion, on a conſideration of the nature of the duties of the judges of circuit, that the neceſſary accommodations ſhould be provided for them during the ſeſſions; I am directed to deſire that you will report whether there are any public buildings which can be appropriated to the abovementioned purpoſe; and if not, that you will ſtate in what manner you would recommend that the neceſſary accommodation ſhould be provided for the judges of circuit with the leaſt expenſe which may be practicable to Government. I am further directed to acquaint you that the Governor General in Council deſires that every perſonal attention, and reſpect, may be ſhewn to the judges of circuit, by yourſelf and the officers ſubject to your authority, during their reſidence at your ſtation, and on their progreſs through your juriſdiction."

Adawlut,

Adawlut,* it was enacted by Section X, Regulation II, 1801, that "the court of Nizamut Adawlut ſhall henceforth conſiſt of three judges, to be denominated reſpectively, chief judge, and ſecond and third judge, of the Nizamut Adawlut, aſſiſted by the head cauzy of Bengal, Behar, Oriſſa, and Benares, and by two mooftics. The ſaid chief judge ſhall not be the Governor General, nor the Commander in Chief, but ſhall be one of the Members of the Supreme Council, to be ſelected and appointed by the Governor General in Council; and the ſaid ſecond and third judges ſhall be ſelected and appointed by the Governor General in Council, from among the covenant civil ſervants of the Company, not being Members of the Supreme Council." The various important duties of the members of the ſupreme government rendering it impracticable for any member of the government to perform effectively the duties of chief judge of the courts of Sudder Dewanny and Nizamut Adawlut, and the entire ſeparation of the judicial anthority from the legiſlative and executive authorities, appearing to be "eſſential for the purpoſe of giving full effect to the proviſions made for enſuring to the people the permanent enjoyment of the ineſtimable bleſſing of juſt laws duly adminiſtered," ſuch part of Regulation II, 1801, as directed that the chief judge of the Sudder Dewanny and Nizamut Adawlut ſhould be a member of the ſupreme council, were reſcinded by Section II, Regulation X, 1805; which provided that "the chief judge of the ſaid courts ſhall be ſelected by the Governor General in Council from among the civil covenanted ſervants of the Company not being members of the ſupreme council."† This proviſion however has been ſince reſcinded by Section II, Regulation XV, 1807; and it is directed by Section III of that regulation, that "the court of Sudder Dewanny Adawlut and

R. II, 1801, § X.
C. P. R. VIII, 1803, § III.
R. X, 1805, § II.
R. XV, 1807, § II.

* Page 130.

† This regulation was before referred to in a note ſubſcribed to page 146, and the neceſſity of three efficient judges, who could apply the whole of their time to the daily ſittings of the Sudder Dewanny Adawlut and Nizamut Adawlut, was pointed out, from the extended juriſdiction of the courts over the ceded and conquered provinces.

Nizamut

Nizamut Adawlut ſhall in future conſiſt of a chief judge, being a member of the ſupreme council, but not the Governor General, nor the Commander in Chief; and of three puiſne judges to be ſelected from among the Company's covenanted ſervants." *

R. II, 1801, § XI. C. P. R. VIII, 1803, § IV.

Oath to be taken by the judges of the Nizamut Adawlut.

THE chief judge, and each of the puiſne judges of the Nizamut Adawlut, are required to take and ſubſcribe before the Governor General in Council an oath, ſimilar to that which is directed to be taken by the judges of the courts of circuit. The regiſter and law officers of the Nizamut Adawlut are alſo required to take and ſubſcribe the ſame oaths as are directed to be taken by the regiſters and law officers of the courts of circuit. It is preſcribed by Section XIII, Regulation II, 1801, (re-enacted for the ceded provinces by Section V, Regulation VIII, 1803,) that the Nizamut Adawlut be an open court; and that it be held, under the ſame proviſions as are preſcribed for the court of Sudder Dewanny Adawlut, with reſpect to the number of judges neceſſary for holding a court; to an eventual difference of opinion between the judges; to

R. IX, 1793, § LXX, LXXI. C. P. R. VIII, 1803, § VII, VIII.

And by the Regiſter and law officers.

R. II, 1801, § XIII. C. P. R. VIII, 1803, § V.

The Nizamut Adawlut to be an open court; and by what rules of proceeding to be guided.

* The grounds of this regulation are not detailed in the preamble; which merely ſtates that it has been deemed adviſable to modify the proviſion contained in Regulation X, 1805. It is underſtood however to be founded upon an order of the Honorable Court of Directors, which, on a principle of economy, and a ſuppoſition that one of the members of the ſupreme council might be able to officiate as chief judge of the Sudder Dewanny Adawlut and Nizamut Adawlut, directed a re-eſtabliſhment of thoſe courts, as conſtituted by Section X, Regulation II, 1801. As however the member of the government who held the nominal office of chief judge under that regulation (Sir George Barlow) was never able, from his conſtant duties in the executive government, to take his ſeat even in either court; and the increaſed buſineſs of the two courts requires, indiſpenſably, the time and attention of three judges; it was impracticable to diſpenſe with the appointment of a third judge, excluſive of the nominal chief judge, who, under Regulation XV, 1807, muſt now be a member of the ſupreme council. Upon the policy of this arrangement it may be ſubmitted, with deference to the high authority upon whoſe orders it is ſaid to be founded, whether any eſſential benefit can be derived from an appointment altogether nominal and efficient? And, if not, whether a complete ſeparation of the judicial authority, from the legiſlative and executive government, would not be more conſiſtent with the principles of wiſdom and experience upon which other Britiſh courts of judicature are eſtabliſhed.

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the ordinary and ſpecial ſittings of the court; to its mode and order of proceeding; and to the execution of its proceſs.* But in conſequence of the number of trials made referrible to the Nizamut Adawlut, by Regulation VIII, 1808, (under the proviſions of which all perſons convicted of robbery by open violence, who may not be liable to ſuffer death, are ſubject to impriſonment and tranſportation for life) the following modifications of the rules before in force have been enacted by that regulation.

Modifications of former rules enacted by R. VIII, 1808.

Section V. Reſtriction, that two judges be neceſſary to hold a court, reſcinded.

"Such part of the exiſting regulations as directs that two judges of the court of Nizamut Adawlut ſhall be neceſſary to hold a court, and that no ſentence or final order of the court ſhall be valid unleſs paſſed by two judges preſent, is hereby reſcinded."

Section VI. In what caſes one judge of the Nizamut Adawlut may hold a ſitting of the court.

"The ſittings of the court of Nizamut Adawlut ſhall be held before two or more judges, as heretofore, whenever the number of trials and other buſineſs depending before the court may admit of it. But whenever the number of depending trials may render it neceſſary, for their ſpeedy determination, that the judges ſhould hold ſeparate ſittings, it ſhall be competent to any one judge to hold a ſitting of the court, and to paſs orders or ſentence upon any trial under reference to it, in conformity with the regulations; provided, that if the ſingle judge ſo ſitting ſhall not concur with the judge of circuit, before whom the trial may have been held, with reſpect to the conviction of the priſoner, he ſhall not paſs ſentence, until one or more of the other judges of the court of Nizamut Adawlut can ſit with him upon the trial."

And what powers may be exercised by the judge ſo ſitting.

Section VII. In what caſes, and under what reſtrictions, a ſingle law officer of the Ni-

"The Mahomedan law officers of the court of Nizamut Adawlut ſhall continue to deliver their joint futwa upon the trials referred to that court, as far as may be practicable.

* See pages 131, 132.

ramut Adawlut may deliver the futwa.

But whenever, from the number of trials in reference, it may be requiſite for their ſpeedy deciſion, that they ſhould be divided amongſt the law officers for reviſion, it ſhall be competent to any one of the law officers to deliver a futwa thereupon. Provided that if any one of the law officers of the Nizamut Adawlut, on reviſing the proceedings held upon the trial, ſhall not concur with the law officer of the court of circuit before whom the trial may have been held, as to the conviction of the priſoner, he ſhall not write the futwa, until one or more of the other law officers of the Nizamut Adawlut can deliver the ſame in concert with him, after peruſal of the proceedings."

R. IX, 1793, § LXXII. Nizamut Adawlut has cognizance of all matters relating to criminal juſtice, and police.

R. IX, 1793, § LXXIII. May exerciſe powers veſted in late Naib Nazim.

R. II, 1801, § XII. Under reſtrictions in the regulations.

R. IX, 1793, § LXXIV. C. P. R. VIII, 1803, § IX. By what law the ſentences of the court to be regulated.

The court of Nizamut Adawlut is authorized to take cognizance of all matters relating to the adminiſtration of juſtice, in criminal caſes, and to the police of the country;* and is directed to ſubmit to the Governor General in Council ſuch regulations regarding them as it may deem adviſable. It may exerciſe the general powers which were veſted in the Nizamut court when held at Moorſhedabad, and ſuperintended by the late Naib Nazim the Nuwab Mohummud Ruza Khan. But its authority in particular caſes is defined by the regulations; and it is preſcribed that the ſentence of the court be regulated by the Mahomedan law, excepting caſes in which a deviation from it may be expreſsly directed by any regulation, paſſed by the Governor General in Council. The modifications of the Mohomedan law enacted by the regulations have been ſtated

* A more direct ſuperintendence of the police is exerciſed by the Governor General in Council, with whom the magiſtrates correſpond, on breaches of the peace, and other ſubjects of police, through the ſecretary to government in the judicial department. In a letter from that officer to the regiſter of the Nizamut Adawlut, dated 14th May 1807, the power reſerved to the executive government was declared in the following terms. "The Governor-General in Council conſiders it eſſential that the powers exerciſed by the executive government in the conſervation of the general peace of the country, ſhould be kept entirely diſtinct from the powers and duties veſted in the Nizamut Adawlut, as a court of criminal judicature; and that the government ſhould receive direct and immediate information of any occurrences requiring its aid and interpoſition."

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in the preceding ſection. The caſes referrible to the Nizamut Adawlut by the magiſtrates, and courts of circuit, have alſo been noticed; and it will be ſufficient to add that in caſes of life and death, as well as in all caſes of corporal puniſhment, fine, and impriſonment, the ſentences of the Nizamut Adawlut, are final. A power of remiſſion, or mitigation of puniſhment, is however reſerved to the Governor General in Council. In all inſtances wherein the futwa of the law officers of the Nizamut Adawlut ſhall declare the priſoner or priſoners liable to more ſevere puniſhment, than, under the evidence and all the circumſtances of the caſe, ſhall appear to that court to be juſt and equitable; and the Mahomedan law ſhall not allow a diſcretion to the court in determining the degree of puniſhment, (as it does in all caſes of tazeer, or chaſtiſement); the court of Nizamut Adawlut are to paſs ſentence according to the exiſting regulations; but are authorized to ſuſpend the execution thereof, and to ſubmit the caſe to the Governor General in Council, with a recommendation, either to mitigate the puniſhment, or to pardon the priſoner, according to the evidence and the circumſtances of the caſe.

And in what caſes ſuch ſentences are final.

Power of remitting or mitigating the legal puniſhment reſerved to Governor General in Council.

R. VI, 1796, § II.
C. P. R. VIII, 1803, § XIX.
Rule for caſes in which the law officers of the Nizamut Adawlut ſhall declare a priſoner liable to more ſevere puniſhment than may appear to the court juſt and equitable.

THE law officers of the Nizamut Adawlut are ordered to aſſemble at the office of the regiſter three times in every week, or oftener if neceſſary. The regiſter is to lay before them the Perſian copies of proceedings upon trials referred by the courts of circuit to the Nizamut Adawlut; after duly conſidering which, and previouſly to leaving the regiſter's office, they are to ſtate in writing, at the foot of the record upon each trial, whether the futwa of the law officer of the court of circuit is conſiſtent with the evidence, and conformable to the Mahomedan law; or the futwa which, in their opinion, ought to be delivered upon the caſe;* and are to ſubſcribe

R. IX, 1793, § LXXVII.
C. P. R. VIII, 1801, § XII.
Rule for obtaining futwas of the law officers of the Nizamut Adawlut and general mode of proceeding to be obſerved upon trials referred to that court.

* Under the option left to the law officers of the Nizamut Adawlut, it has been their invariable practiſe to deliver a general futwa upon the caſe; without any direct reference to the futwas given by the law officers of the courts of circuit: though any erroneous reaſoning, or concluſion, in the latter, is ſometimes indirectly noticed and refuted.

their

their names, and affix their ſeals thereto. The regiſter is to ſubmit the proceedings ſo reviſed to the judges of the Nizamut Adawlut at their next meeting; and the court, after peruſing the proceedings of the court of circuit, with the futwas of the law officers of that court, and of the Nizamut Adawlut, are to paſs the final ſentence; unleſs further evidence or information upon any point appear requiſite; in which caſe the neceſſarry inſtructions are iſſued to the courts of circuit, or magiſtrates; and the ſentence is poſtponed till a communication ſhall have been made of the reſult; when, if further evidence be received, a ſecond futwa is taken from the law officers, and the trial is again brought before the court.

In what caſes the Nizamut Adawlut may confirm the ſentence paſſed by the judge of circuit, without reviſing the proceedings held upon the trial.

REG. LIII, 1803, § VII, C. 5.

WITH a view to expedite the deciſion upon trials referred to the Nizamut Adawlut, as far as the ends of juſtice would permit, it was declared by the fifth clauſe of Section VII, Regulation LIII, 1803, that "in caſes not incurring capital puniſhment, where a priſoner may have been convicted by the futwa of the law officer to the court of circuit; and the judge of circuit, before whom the trial has been held, ſhall concur in ſuch conviction; and conſider the priſoner a proper object of the puniſhment to which he is liable under the Mahomedan law, or the regulations; and ſhall paſs ſentence upon him accordingly, (as required in ſuch caſes by clauſe ſecond, of Section VI, of this regulation); and the law officers of the Nizamut Adawlut, on conſideration of the proceedings held upon the trial, ſhall alſo confirm the conviction of the priſoner; and the ſentence paſſed upon him by the judge of circuit ſhall appear to the Nizamut Adawlut to be conformable to the regulations; it ſhall be competent to the judges of the Nizamut Adawlut to confirm the ſentence ſo paſſed upon the priſoner by the court of circuit, and confirmed by the futwa of their law officers, and found conformable to the regulations; without a reviſion of the proceedings held upon the trial; except in caſes which for any ſpecial reaſon, or purpoſe of juſtice, may appear to require it.

Provided,

Provided, that in all caſes wherein the priſoner or priſoners, or any priſoner included in a trial referred to the Nizamut Adawlut, may be liable to capital puniſhment; as well as in all other caſes wherein the judge of circuit, before whom the trial is held, may not concur in the conviction of the priſoner, declared by the futwa of his law officer; or may not conſider the priſoner, though convicted, a proper object of the puniſhment to which he is liable by the Mahomedan law and regulations; or in which the law officers of the Nizamut Adawlut may not confirm the conviction of the priſoner, declared by the law officer of the court of circuit; or in which the ſentence paſſed by the court of circuit may not appear conformable to the regulations; or in which any ſpecial reaſon, or purpoſe of juſtice, may appear to require a reviſion of the trial; the judges of the Nizamut Adawlut ſhall reviſe and conſider the whole of the proceedings held upon the trial; or, in caſes not capital, ſo much thereof, as may be requiſite to enable them to form a full judgment on the caſe in reference to them; and ſhall paſs ſentence accordingly." By Section VIII, Regulation VIII, 1808, the above rule is continued in force under the preſent conſtitution of the Nizamut Adawlut, as modified by the proviſions of that regulation. And it is further declared, that if the judge of circuit, before whom the trial has been held, be of opinion that the priſoner is duly convicted, and the futwa of his law officer, as well as the futwa of the law officer or officers of the Nizamut Adawlut, confirm ſuch conviction, it ſhall be competent to two or more judges of the court of Nizamut Adawlut, on conſideration of ſuch part of the proceedings held upon the trial, as they may deem it neceſſary to reviſe, to confirm the ſentence paſſed by the court of circuit, in conformity with the regulations; although the judge of circuit may recommend a mitigation of the preſcribed puniſhment; if, on conſideration of the reaſons ſtated by the judge of circuit, the court of Nizamut Adawlut ſhall be of opinion that there are not ſufficient grounds for the propoſed mitigation; or to mitigate the ſentence,

Proviſion for caſes in which the Nizamut Adawlut are to reviſe the proceedings, in whole, or in part.

R. VIII, 1808, § VIII. The former rule continued under new conſtitution of the Nizamut Adawlut.

And two judges empowered to confirm ſentence of the court of circuit, in certain caſes, altho' the judge of circuit may recommend a mitigation of puniſhment.

Or to mitigate the ſentence as recommended by the judge of circuit.

tence, as recommended by the judge of circuit, if from his ſtatement of the caſe there appear to be ſufficient grounds for ſo doing."

Reg. IX, 1793, § LXXVIII. C. P. R. VIII, 1803, § XIII. Sentences of the Nizamut Adawlut how to be executed.

WITHIN three days after ſentence is paſſed by the court of Nizamut Adawlut, or ſooner if practicable, the regiſter is to tranſmit a copy of it, under the ſeal of the court, and atteſted with his official ſignature, to the judges of the court of circuit, who are immediately to iſſue a warrant to the proper magiſtrate, to cauſe the ſentence to be carried into execution.* The magiſtrate, on receipt of the warrant, is to cauſe the ſentence to be executed, without delay; and to return the warrant to the court of circuit, with an endorſement under his official ſeal and ſignature, certifying the manner in which the ſentence has been executed.† All warrants ſo returned are

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* For the fuller information of the magiſtrates, the courts of circuit were inſtructed by the Nizamut Adawlut, on the 13th March 1804, in all caſes of capital puniſhment, to tranſmit to the magiſtrate, with their warrant, a copy of the ſentence paſſed by the Nizamut Adawlut.

† Printed forms of warrants, in the Engliſh and country languages, are furniſhed to the magiſtrates by the regiſter to the Nizamut Adawlut, and the following inſtructions were circulated to the magiſtrates, through the courts of circuit, on the 19th June 1804. "It is the intention of the Nizamut Adawlut, that all warrants ſhould be returned to the court by which they are iſſued, after the complete execution of the ſentence contained in them, with an endorſement, certifying the manner in which the ſentence has been carried into execution. In the caſe of a ſentence both for corporal puniſhment and impriſonment, the carrying into execution of the former part of the ſentence ſhould be endorſed on the warrant at the time of inflicting the puniſhment; but as the warrant in this caſe cannot be conſidered to be completely executed until the priſoner has undergone the period of impriſonment adjudged againſt him, the magiſtrate ſhould retain the warrant until the expiration of the term of impriſonment, or return it duly endorſed ſhould the priſoner die during the courſe of the term; or, in the event of his being removed to another zillah, the warrant ſhould be tranſmitted to the magiſtrate of the zillah to whom the priſoner may be ſent, with information that he is to return it duly endorſed to the court of circuit, on the expiration of the ſentence, or death of the priſoner." The following orders for certifying the reſtoration of ſtolen property were alſo tranſmitted to the courts of circuit on the 5th May 1796. "The court of Nizamut Adawlut, adverting to the orders which frequently form part of their ſentences for the reſtoration of ſtolen property found on the priſoners convicted; and being of opinion that the execution of ſuch orders ſhould be certified

are to remain with the court of circuit; excepting warrants for the infliction of capital punishment, which are to be forwarded to the Nizamut Adawlut. *

THE powers vested in the court of Sudder Dewanny Adaw- R. II, 1801, § XIV.

tified by the zillah and city magistrates, either in the return endorsed by them on the warrant of the court of circuit, or in a subsequent return to be made as soon as the execution of the order may admit; you are accordingly directed to require the magistrates of your division to certify to you, in the manner above stated, the execution of all orders of the foregoing description, and are to be careful that such certificates are preserved among the records of your court."

* In the execution of sentences of the courts of circuit and Nizamut Adawlut for corporal punishment, by stripes; a thick whip, of one thong, made of corah hide or leather, and thence called a corah, is used. And the following instructions were issued to the magistrates through the courts of circuit on the 21st and 28th December 1796. "The court of Nizamut Adawlut taking into consideration the objections which have arisen to the instruments of punishment introduced since the discontinuance of the corah in November 1794, and to the use of the military cat as has been proposed; and from all the information which they have been able to obtain on the subject, having no reason to believe that the corah, which has long been the established instrument of corporal punishment in this country, has in any instance proved fatal, or is likely to be productive of fatal consequence if used with proper precautions, they have directed me to desire that you will instruct the several magistrates within your division to use the corah, which was formerly the established instrument of punishment, in the execution of sentences for corporal punishment, passed by the court of Nizamut Adawlut, or by your court, under the following precaution:

1st. The whipping post to be so constructed as that the prisoner, when tied to it, may be secured from receiving any part of the blow on his breast or other forepart of his body.

2dly. The corah-burdar to be positively enjoined to strike the prisoner on the back only; with every possible attention to prevent the blow's falling on any other part of the body.

3dly. All prisoners to be examined by the surgeon of the station (or in his absence by the native doctor) previously to their being punished; and the punishment to be postponed of any prisoner whom the surgeon (or native doctor) may consider in too infirm a state to receive it, as long as he may judge necessary.

4thly. The native doctors, attached to the jails of the several stations, to be present on all occasions when prisoners are punished with the corah; and the punishment to be stopped at any stage of it, if the native doctor should be of opinion, that the infliction of the remaining stripes will endanger the prisoner's life; in which case the remainder of the punishment is to be postponed until the surgeon of the station consider the prisoner capable of sustaining it. On the 25th October 1797, the magistrates were further directed to use a jacket, introduced by the third judge of the Dacca court of circuit (Mr. CRISP,) made of strong-hide, so formed and fitted as to cover and defend from injury the whole of the fore-part of the body, and the neck and loins behind; leaving exposed only that part of the back and shoulders on which the stripes ought to fall.

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C. P. R. VIII, 1803, § XXIV. Powers veſted in court of Nizamut Adawlut in caſes of diſobedience, or neglect, or falſe return to any proceſs, rule, or order by a court of circuit, or magiſtrate.

lut, to ſuſpend from office, any judge or judges of the provincial, zillah, or city courts, for diſobedience or neglect of any proceſs, rule, or order, of the court of Sudder Dewanny Adawlut, or for a falſe return thereto; and to ſuſpend any judge of a zillah or city court, in caſes of diſobedience, neglect or falſe return to any proceſs, rule, or order, of a provincial court of appeal, are declared to be equally veſted in the court of Nizamut Adawlut, in ſimilar caſes of diſobedience, neglect or falſe return, to any proceſs, rule, or order, of that court, by the judges of the courts of circuit, or the zillah or city magiſtrates; as well as in caſes of diſobedience, neglect, or falſe return, by a zillah or city magiſtrate, to any proceſs, rule, or order, of a court of circuit; and in ſuch caſes, the courts of circuit are directed to make the ſame reports to the court of Nizamut Adawlut, as the provincial courts of appeal are required to make to the Sudder Dewanny Adawlut.

How to proceed on reports of neglect or miſconduct by a zillah or city magiſtrate, or by a regiſter or aſſiſtant to a court of circuit or magiſtrate.

The court of Nizamut Adawlut is further authorized and directed to proceed upon reports from the courts of circuit, of neglect or miſconduct, by the zillah or city magiſtrates, as well as upon reports from the court of circuit, and zillah or city magiſtrates, of neglect, or miſconduct, by their regiſters, aſſiſtants, or other miniſterial officers, in the ſame manner as the court of Sudder Dewanny Adawlut is authorized and directed to proceed upon ſimilar reports to that court, of neglect, or miſconduct, on the part of the judges of the zillah and city courts; or of the regiſters, aſſiſtants, and other miniſterial officers of thoſe courts; or of the provincial courts of appeal; and in all caſes, wherein a covenanted ſervant of the Company, employed in any of the criminal courts, or in any office of police, may appear to the Nizamut Adawlut to have been guilty of neglect of duty, or of other miſconduct, not expreſsly provided for by the regulations, that court is either to report the ſame to the Governor General in Council, or to adviſe and admoniſh the party, as the caſe may require.

General rule, when a covenanted ſervant may appear guilty of neglect of duty or other miſconduct not provided for by the regulations.

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THE court of Nizamut Adawlut is empowered to authorize occaſional deviations from the order of ſucceſſion, fixed for the half-yearly jail deliveries, upon report of any particular circumſtances that may occur to render ſuch deviations neceſſary. It is alſo competent, with the ſanction of the Governor General in Council, to authorize any ſpecial deviation, which may appear neceſſary or expedient, from the rules preſcribed for the periods of the ſeveral jail deliveries. * It is further declared competent to call for the proceedings of any court of circuit, or of any zillah or city magiſtrate, or aſſiſtant to a magiſtrate, whenever it may appear requiſite; and to paſs ſuch orders thereupon as it may deem juſt and proper.

R. III, 1798, § VI.
R. II, 1804, § VIII.
C. P. R. I, 1806, § VI.
Further powers veſted in Nizamut Adawlut for occaſional deviations in the fixed order and periods of the zillah and city jail deliveries.

R. IX, 1807, § XXIV.
And general power of calling for and controlling the proceedings of any court of circuit, magiſtrate, or aſſiſtant.

THE court of Nizamut Adawlut is directed to keep a regular diary of its proceedings. But ſince the alteration made in the conſtitution of the court by Regulation II, 1801, an Engliſh tranſlation and record are not required, except as the court may find convenient and conducive to regularity; and as may be neceſſary in the preſcribed caſes of reference to the Governor General in Council; when atteſted copies of the court's proceedings, and tranſlations of any papers in the country languages, are to be furniſhed. *

R. IX, 1793, § LXVIII.
C. P. R. VIII, 1803, § VI.
Diary of proceedings to be kept by Nizamut Adawlut.
R. II, 1801, § XVI.
How far an Engliſh record, and tranſlation of papers in the country languages, are required.

IN addition to the general rules, and ordinary courts of criminal juriſdiction, which have been mentioned, the following ſpecial proviſions have been enacted for the trial of perſons charged with crimes againſt the ſtate, who may not be brought to trial before a court martial, in purſuance of Regulation X, 1804, already cited. "In all caſes, in which a perſon ſubject to the ordinary juriſdiction of the courts of circuit ſhall be charged with treaſon, rebellion, or other crime againſt the

Special rules for the trial of perſons charged with crimes againſt the ſtate, who may not be tried by a court martial.

R. IV, 1799, § II.
Re-enacted for ceded provinces by R. XX, 1803.

* This has been already noticed, with the proceedings of the court of Sudder Dewanny Adawlut; as well as the intention of preparing an annual report of the trials upon which ſentence is paſſed by the court of Nizamut Adawlut, for the information of government and of the Honble Court of Directors. Theſe reports have been tranſmitted for the year 1805, and are prepared for the years 1806 and 1807.

Before what court perſons charged with ſuch crimes may be brought to trial.

ſtate, the Governor General in Council, or the executive Government at Fort William for the time being, ſhall be competent to order the perſon or perſons, ſo charged, to be brought to immediate trial before all the judges of the court of circuit, to which ſuch perſon or perſons may be amenable; or before any other ſpecial court, which it may be judged expedient to appoint for this purpoſe, conſiſting of three judges, and two Mahomedan law officers; or ſuch other number of judges and law officers, as may be thought proper."

Section III. Courts appointed to try ſuch perſons how to proceed.

"THE courts convened under the preceding ſection, whether compoſed of the judges of the courts of circuit, or otherwiſe, are to try the priſoners brought before them in the ſame manner as they would have been tried before the ordinary courts; and ſhall exerciſe all the powers and authorities veſted in the courts of circuit by the regulations; except that their ſentence, whether of acquittal or puniſhment, ſhall in every inſtance be reported with their proceedings to the court of Nizamut Adawlut, previous to carrying the ſame into execution, and they are to be guided as to the place where they are to aſſemble, the perſons to be tried by them, and all other particulars not provided for in the regulations, by the ſpecial orders which they may receive from the executive government, or from the court of Nizamut Adawlut."

Section IV. Proviſion for death, or abſence, of any of the judges or law officers of the courts ſo appointed.

"IN caſe of the death, or of the abſence, from indiſpoſition or other cauſe, of any of the judges, or law officers, of the courts which may be appointed to try offenders under this regulation, the remaining judge or judges, or law officer or officers, ſhall be competent to form a court, and proceed with the trial or trials, until proviſion can be made by the Governor General in Council, or by the executive government for the time being, for ſupplying the place of ſuch judge or judges, or law officer or officers, if any ſuch proviſion ſhall be deemed neceſſary; or, if no ſuch proviſion be made, the

powers

powers and proceedings of the ſaid courts ſhall not be affected by the death or abſence of ſuch judge or judges, or law officer or officers, any more than if the ſame had never taken place."

Section V. Nizamut Adawlut how to proceed upon trials referred to them in ſuch caſes.

"THE Nizamut Adawlut on the receipt of any trials referred to them under this regulation, are to proceed thereupon according to the rules in force with reſpect to other trials referred to them; except that they are in every inſtance to report their ſentences, with the whole of the proceedings held upon the caſe, to the Governor General in Council, or to the Executive Government for the time being; and are to wait the orders of government before they direct their ſentence to be carried into execution."

Section VI. Injunctions to magiſtrates with reſpect to perſons charged with crimes againſt the ſtate.

"THE magiſtrates of the ſeveral zillahs and cities are enjoined to give their utmoſt aſſiſtance, as far as may depend on them, in expediting the trial of all perſons charged with the crimes mentioned in this regulation; and in the event of any perſon, or perſons, being charged with ſuch crimes before them in the firſt inſtance, they are to give immediate notice ther of to the Governor General in Council, for his orders. The magiſtrates are alſo required to pay immediate and ſtrict attention to all orders which may be tranſmitted to them by the executive government, for the apprehenſion of perſons charged as aforeſaid, or for making any enquiry reſpecting ſuch perſons, or for committing them to take their trial before the ordinary courts of circuit, or before the ſpecial courts deſcribed in this regulation."

Special rules for the trial of crimes and miſdemeanors charged againſt the inhabitants of the Rajemahl and Boglepore hills. R. I, 1796.

SPECIAL rules have alſo been enacted for the trial of crimes and miſdemeanors, charged againſt the mountaineers, who inhabit the hills of Rajemahl and Boglepore. And as the reaſons of policy and juſtice, upon which theſe rules were founded, are fully ſtated in the preamble to Regulation I, 1796, it

is here inſerted at length, with the proviſions referred to.

Preamble. Stating grounds of this regulation.

"THE hills ſituated to the South and Weſt of Rajemahl, and in other parts of the zillah of Boglepore, are inhabited by a diſtinct and uncivilized race of people, differing entirely in manners, cuſtoms, and religion, from the inhabitants of the circumjacent country, and who, as far as can be traced, never acknowledged the authority of the native Government. Being deſtitute of manufactures, and but little acquainted with agriculture, they ſubſiſted principally by plunder; and their incurſions into the low country, which were attended with every ſpecies of cruelty, had almoſt deſolated the diſtricts to which they were extended. Theſe people were at length induced by the late Mr. AUGUSTUS CLEVLAND, the collector of the zillah, to relinquiſh their predatory habits, and to ſubmit to the authority of the Britiſh adminiſtration. Amongſt the meaſures which he adopted with the ſanction of Government, for eſtabliſhing good order throughout the hills, certain pecuniary allowances were granted to the chiefs of the ſeveral hills, on condition of their preſerving the peace of their reſpective juriſdictions; and with a view to conciliate the inhabitants, as well as in conſideration of their uncivilized ſtate, and entire ignorance of the language, laws, and cuſtoms of the Mahomedans and Hindoos, it was determined on the 14th June 1782, that the inhabitants of the hills ſhould not be ſubject to the juriſdiction of the ordinary tribunals of the country; but that all crimes and miſdemeanors committed by them ſhould be tried by an aſſembly of their chiefs, to be held at the town of Boglepore, or Rajemahl, or elſewhere in the diſtrict, under the ſuperintendence of the magiſtrate; who was ordered, in particular caſes, to report the ſentences paſſed by the aſſembly for the reviſion of the Governor General and Council. This mode of trial having been found to be highly ſatisfactory to the hill people, and having anſwered the purpoſes of juſtice, the Governor General in Council has reſolved to continue it; but deeming

deeming it conſiſtent with the principles of the regulations, for the adminiſtration of juſtice, that the reviſion of the ſentences paſſed by the aſſembly of hill chiefs, ſhould be tranſferred from the Governor General in Council, to the Nizamut Adawlut, under ſpecial rules; he has paſſed this regulation, which is to be conſidered in force from the date of its promulgation."

Section II. Hill people in Rajemahl and Boglepore excepted from the general rules of criminal juſtice.

"THE hill people in the diſtricts of Rajemahl and Boglepore ſhall not be tried for crimes or miſdemeanors by the Mahomedan law, nor by the rules and regulations at preſent in force, or which may be hereafter enacted, for the trial of other individuals ſubject to the juriſdiction of the ordinary criminal tribunals of the country."

Section III. Magiſtrate how to proceed on criminal charges againſt them.

"ALL hill people who may be accuſed of crimes or miſdemeanors, ſhall, on their apprehenſion, be brought before the magiſtrate of Boglepore, who ſhall cauſe the complaint, if not preferred to him in writing, to be committed to writing, and atteſted by the complainant with his ſignature or mark; and if it ſhall appear to him on examination of the complainant, or any perſon, or perſons, ſaid to be acquainted with the circumſtances of the caſe, on oath, to be adminiſtered and taken according to their religious perſuaſion, or cuſtom, that the crime, or miſdemeanor, of which the priſoner may be accuſed, was never committed, or that there is no ground to ſuſpect him of having been concerned in the commiſſion of it, the magiſtrate ſhall cauſe the priſoner to be forthwith diſcharged, recording his reaſons for ſo doing."

Section IV. C. 1. In what caſes to be committed, or held to bail, for trial before an aſſembly of hill chiefs.

"IF it ſhall appear to the magiſtrate, that the crime or miſdemeanor was actually committed, and that there are grounds for ſuſpecting the priſoner of having been concerned in the commiſſion of it, the magiſtrate ſhall cauſe him to be committed to priſon or held to bail, as may appear to him proper, to

take his trial before an aſſembly of hill chiefs, naibs, and manjeys, to be convened for that purpoſe by the magiſtrate; who is required to adopt ſuch meaſures as may appear to him neceſſary to enſure the attendance of the proſecutor, and the witneſſes on the part of the proſecution, and the priſoner, when the trial ſhall come on."

Section IV. C. 2. Priſoner to be queſtioned if he wiſhes to have any witneſſes examined before the hill aſſembly, and his anſwer recorded on the magiſtrate's proceedings.

"In all caſes of a priſoner being committed or held to bail for trial before a hill aſſembly, the magiſtrate, immediately after paſſing the order of commitment, ſhall queſtion the priſoner as to whether he wiſhes to have any witneſs or witneſſes examined in his defence before the aſſembly, and in the event of the priſoner anſwering in the affirmative, ſhall cauſe a liſt of the witneſſes named by him, ſpecifying their deſignations and places of abode, to be taken down and recorded on his proceedings; or in the event of the priſoner's replying in the negative, ſhall cauſe ſuch anſwer to be recorded on his proceedings for the information of the aſſembly, and eventually of the Nizamut Adawlut."

Section IV. C. 3. Any other witneſſes named by the priſoner previouſly to the ſitting of the aſſembly, to be ſummoned by the magiſtrate.

"An obſervance of the foregeing rule will leave all priſoners, committed or held to bail for trial before the aſſembly, without any juſt ground of complaint that they have not been allowed to bring witneſſes in ſupport of their innocence; but as it may happen from want of recollection or other cauſe, a priſoner, at the time of his commitment may omit to name a witneſs whoſe evidence he may afterwards be deſirous to adduce upon his trial, the magiſtrate ſhall obſerve it as a rule, in the event of any priſoner, who may be committed or held to bail to take his trial before the aſſembly, deſiring, previous to the commencement of the ſitting of the aſſembly, the examination of any witneſs or witneſſes upon his trial, although the ſame may not have been named by him at the time of his being committed, or held to bail, he is to be careful to cauſe the attendance of ſuch witneſs or witneſſes, as well

well as of thoſe before named, at the time fixed for the trial of the party who may deſire their examination."

Section IV. C. 4. Liſts of witneſſes and returns to ſervice of ſummonies upon ſuch as are abſent, to be laid before aſſembly.

"THE magiſtrate is to furniſh the aſſembly, together with his proceedings on each trial referred to them, with liſts of the witneſſes who may have been ſummoned at the requiſition of the proſecutor or the priſoner, ſpecifying thoſe who are in attendance, and ſuch as are abſent; with the cauſe of the non-attendance of the latter. To furniſh the aſſembly with the fulleſt, and moſt accurate information on the non-attendance of any abſent witneſs, the above liſts ſhall be accompanied with the original returns made to the magiſtrate by the nazir, and perſon deputed on his part, to ſerve the ſummons on any witneſs, who may not be in attendance; and the nazir and the perſon ſo deputed on his part ſhall be kept in attendance on the aſſembly, to anſwer any interrogatories which the members thereof may judge it neceſſary to put to them. By this means, the aſſembly will be enabled to aſcertain the real cauſes of the non-attendance of the witneſſes, by their own inquiry; and it is expected they will in every inſtance make ſuch inquiry, as far as may be neceſſary to ſatisfy themſelves, and the court of Nizamut Adawlut, in caſes referrible to that court, as hereafter directed, that all due meaſures have been taken to cauſe the attendance of all the witneſſes, both on the part of the proſecutor and the priſoner."

Nazir and perſon deputed to ſerve the ſummons to be alſo kept in attendance.

Inquiry to be made by aſſembly reſpecting abſent witneſſes.

Section V. Magiſtrate may hear petty complaints. And adjuſt them to ſatisfaction of the parties.

"THE magiſtrate is empowered to hear all petty complaints that may be brought before him, and to decide thereon whenever he can adjuſt them to the ſatisfaction of both parties; but in caſes in which this cannot be effected, and the party accuſed ſhall appear to him deſerving of puniſhment, he is invariably to commit, or hold to bail the priſoner, to take his trial before the enſuing aſſembly."

"WHENEVER

Section VI. Litigious and groundleſs complaints how punishable by the magiſtrate.

" WHENEVER the complaints ſpecified in the preceding ſection ſhall appear to the magiſtrate to be litigious, vexatious, or groundleſs, he is authorized to puniſh the complainant by confinement for fifteen days, or by corporal puniſhment, not exceeding fifteen ſtrokes of a rattan."

Section VII. Aſſembly to be convened twice in every year, or as often as neceſſary.

" AN aſſembly of hill chiefs, naibs, and manjeys, ſhall be convened by the magiſtrate twice in every year, or as often as may be neceſſary, for the trial of hill people charged with crimes or miſdemeanors, under the rules and cuſtoms prevalent among them."

Section VIII. Oath to be adminiſtered to hill chiefs, naibs, and manjeys.

" THE magiſtrate is enjoined to cauſe to be adminiſtered to the chiefs, naibs, and manjeys, who are entitled to ſit in judgment, and to paſs ſentence on the priſoners brought before them, previouſly to their entering upon the duties for which they are convened, the oath which may be conſidered by them moſt ſolemn and binding. It not having been cuſtomary however to adminiſter an oath to the inferior manjeys, who have only a deliberate voice, they are not to be ſworn."

Section IX. Aſſembly, where to be held; and when adjourned.

" THE magiſtrate is empowered to cauſe the aſſembly to be held in any part of the zillah of Boglepore, which he may conſider moſt convenient, and to adjourn the aſſembly as ſoon as the buſineſs for which it may have been convened ſhall be completed."

Section X. Magiſtrate to be preſent at aſſemblies. And may ſuggeſt queſtions to witneſſes, or the priſoner.

" THE aſſemblies are to be held in the preſence of the magiſtrate, who is authorized to ſuggeſt ſuch queſtions to be put by the court to the witneſſes, or to the priſoner, as he may think neceſſary, as well for the purpoſe of bringing all the circumſtances of the caſe before the court, as for enabling the Nizamut Adawlut, to decide finally on ſuch caſes as may be ultimately ſubmitted to them. He ſhall alſo cauſe the aſſembly to obſerve in their proceedings, as much regularity as

Alſo to cauſe obſervance of

circumſtances

circumſtances will admit; and he is authorized to allow ſuch examinations as may have been taken before him, in the firſt inſtance, and ſhall have been fully and freely admitted by priſoners on their trial, to form a part of the proceedings. But he ſhall not exerciſe any interference whatever, nor ſuffer his officers, or any perſon, not being a member of the court, to interfere in any reſpect, with the deliberations or ſentences of the court."

regularity and examinations before him to form part of the proceedings.

But not to interfere, or allow any other perſon to interfere, in deliberations and ſentences of the court.

"If ſentence of confinement ſhall be paſſed on a priſoner for a term not exceeding fourteen years, the magiſtrate, provided he ſhall approve of the ſentence, is authorized to confirm it, without any reference to the Nizamut Adawlut. The magiſtrate ſhall carry ſuch ſentences into immediate execution if he ſhall approve of them; or he ſhall mitigate the puniſhment adjudged by them if it ſhall appear to him too ſevere. But in every inſtance this diſcretion ſhall be exerciſed by him, he is required to report the circumſtances to the Nizamut Adawlut, and to ſtate his reaſons to that court for any alteration he may make in the ſentence of the aſſembly."

Section XI. Magiſtrate may confirm ſentences for confinement, not exceeding 14 years.

And cauſe ſuch ſentences to be executed, or mitigated; reporting any mitigation to the Nizamut Adawlut.

"Should the ſentence adjudge the offender or offenders to ſuffer death, or mutilation, or impriſonment for a term exceeding fourteen years, the magiſtrate is to tranſmit the original proceedings held on the trial to the Nizamut Adawlut, with his opinion on each caſe."

Section XII. In what caſes the proceedings to be referred, with the magiſtrate's opinion, to the Nizamut Adawlut.

"The court of Nizamut Adawlut ſhall reviſe the proceedings on the trials tranſmitted to them under the preceding ſection, and ſhall confirm or alter the ſentences, or paſs ſuch ſentence as they may judge equitable, under the rules and reſtrictions contained in the following clauſes."

Section XIII. C. 1. Proceedings to be reviſed, and ſentence paſſed, by the Nizamut Adawlut.

"It ſhall not be competent to the Nizamut Adawlut to paſs

§ XIII. C. 2. Reſtriction in

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passing sentence of capital punishment.

sentence of capital punishment on any prisoner who may not have been adjudged to suffer death by the assembly."

§ XIII, C. 3. Mutilation commutable to imprisonment.

"ALL sentences of mutilation, provided the court shall be satisfied of the prisoner's guilt, shall be committed to imprisonment for fourteen years, if the prisoner shall have been sentenced to lose two limbs; and for seven years, if he shall have been sentenced to lose one limb. If the court, on consideration of the case, shall not consider the prisoner deserving of so long a period of imprisonment as is above prescribed, they shall restrict it to such shorter period as they may think proper."

§ XIII, C. 4. Option of next of kin to pardon, or receive a pecuniary compensation, in cases of murder, not to be admitted.

"A CUSTOM having obtained amongst the hill people, in certain cases of murder, of leaving the option to the next of kin to the deceased, either to pardon the murderer, or to demand retaliation, or a pecuniary compensation, the operation of this custom shall not be admitted. But in all cases in which a prisoner shall be pronounced by the assembly guilty of murder, and the case shall be such, that the prisoner would be liable to suffer death, supposing the option abovementioned were to be continued, and the heir or heirs should demand retaliation, the prisoner shall be sentenced to undergo capital punishment, and shall suffer death accordingly."

§ XIII. C. 5. Nizamut Adawlut may recommend to Governor General in Council, a remission, or mitigation, of punishment, if the prisoner be a proper object of mercy.

"IN all cases in which a prisoner shall be sentenced to suffer death by the assembly of hill chiefs, and the Nizamut Adawlut shall deem him a proper object for mercy, the court shall submit the case to the Governor General in Council, and recommend a pardon, or such commutation of the sentence, as may appear to them proper, on a consideration of the circumstances of the case."

XIV. of trials to

"THE magistrate, within ten days after the adjournment of every hill court, or as much earlier as circumstances may admit

admit, ſhall tranſmit to the Nizamut Adawlut, a Perſian record (to be obtained through the medium of the bundwaries or interpreters) of all trials that are referrible to them, with a ſeparate letter containing his remarks on each particular caſe."

lut, to be tranſmitted with magiſtrate's remarks on each caſe, within ten days after adjournment of every hill court.

"THE regiſter to the Nizamut Adawlut, within ſix days after every final ſentence ſhall be paſſed, ſhall tranſmit a copy of it, under the ſeal of that court, and atteſted with his official ſignature, to the magiſtrate of Boglepore; who ſhall cauſe the ſame to be executed without delay, reporting to the Nizamut Adawlut the manner in which the ſentence has been enforced."

Section XV. Regiſter of Nizamut Adawlut to communicate ſentence of that court, within ſix days; for execution by magiſtrate.

"THE magiſtrate ſhall include the names of the hill priſoners in the 1ſt, 3d, 4th, 5th and 6th reports, which he is required to keep, and tranſmit monthly to the Nizamut Adawlut, by Section XXX, Regulation IX, 1793, according to their reſpective deſcriptions; and to conſider them when apprehended, and after ſentence, in every other reſpect in the ſame ſituation as the reſt of the priſoners under his charge.

Section XVI. In what reports hill priſoners to be included.

"IN caſes coming under the cognizance of the magiſtrate of Boglepore, in any reſpect connected with the trial of hill priſoners, for which no ſpecific rule is preſcribed in theſe regulations, he is to act according to juſtice, equity, and good conſcience; bearing in mind, that he is to ſhew every indulgence and attention to the prejudices and cuſtoms of the hill people, conſiſtently with the principles of juſtice."

Section XVII. Magiſtrate how to act in caſes for which no ſpecific rule is preſcribed.

REGULATION XIV, 1805, "for extending the juriſdiction of the court of circuit for the diviſion of Calcutta, and of the Nizamut Adawlut over the ſettlements of Chandernagore and Chinſurah, in certain caſes, and for defining the powers and duties

R. XVI, 1805, Regulation for the temporary adminiſtration of criminal juſtice in the French ſettlement of Chandernagore, and

Dutch ſettlement of Chinſurah.

duties of the ſuperintendent of Chandernagore, and commiſſioner of Chinſurah, in his capacity of magiſtrate for theſe ſettlements," has been already adverted to in the preceding ſection.* The Regulation recently enacted, to provide for the adminiſtration of civil and criminal juſtice in the ſettlement of Serampore, in conſequence of its capture by the Britiſh arms, has alſo been referred to in a note to the preſent ſection. As both theſe regulations are temporary, intended to have operation only whilſt the Foreign ſettlements ſpecified ſhall remain ſubject to the Britiſh Government, it does not appear neceſſary to detail the whole of the proviſions contained in them. It will be ſufficient to tranſcribe the following ſections of the two regulations in queſtion, which ſhew the tribunals eſtabliſhed for the trial of perſons charged with criminal offences, in each ſettlement, and the powers veſted in them reſpectively.

Alſo in the Daniſh ſettlement of Serampore.

R. XVI, 1805, § II. Juriſdiction of Calcutta court of circuit and Nizamut Adawlut extended to Chandernagore and Chinſurah.

"THE juriſdiction of the court of circuit for the diviſion of Calcutta, and of the court of Nizamut Adawlut eſtabliſhed at Calcutta, ſhall, under the proviſions contained in this regulation, extend over the ſettlements of Chandernagore and Chinſurah; including all places within the limits of thoſe ſettlements, as poſſeſſed by the French and Dutch governments in the years 1793 and 1795."

Section III. C. 1. By what regulations the court of circuit and Nizamut Adawlut to be guided.

"IN all matters cognizable by the court of circuit and the court of Nizamut Adawlut, under this regulation, thoſe courts ſhall be guided in their proceedings and deciſions by the regulations which have been enacted, or which may be hereafter enacted, in conformity with the rules preſcribed in Regulation XLI, 1793, for the adminiſtration of criminal juſtice, in the provinces of Bengal, Behar, and Oriſſa."

* Page 423.

"It is at the ſame time hereby provided, that no part of the exiſting regulations, whereby the puniſhment of any offence is enhanced beyond the puniſhment of ſuch offence preſcribed by the Mahomedan law, ſhall be conſidered applicable to any crime, committed within the ſettlement of Chandernagore or Chinſurah, as deſcribed in the preceding ſection, before the promulgation of this regulation."

Section III. C. 2. Proviſo, reſpecting offences committed before the promulgation of this regulation.

"In all ſuch caſes, viz. whenever the crime charged ſhall appear to have been committed within the limits deſcribed in the preceding ſection, before the promulgation of this regulation, the court of circuit and Nizamut Adawlut ſhall be guided by the Mahomedan law, as declared by the futwas of their law officers; and by ſuch modifications of it, in favor of the priſoner, as have been made by any regulation in force; except that the will of the heir of the ſlain ſhall not be allowed to operate in caſes of murder; but the futwa and ſentence in ſuch caſes ſhall be given, without any reference to the heir of the ſlain, on a ſuppoſition that the legal demand for kiſſas has been made, as provided by Sections III and IV, Regulation IV, 1797."

Section III. C. 3. What law to govern the ſentence of the court of circuit and Nizamut Adawlut in ſuch caſes.

"It is further hereby provided, that if the offender be an European, or the deſcendant of an European, and be a ſettled inhabitant of Chandernagore or Chinſurah, and the puniſhment of the offence under the Mahomedan law, and the proviſions of this regulation, would be more ſevere than the puniſhment of the ſame offence under the law in uſe when the ſettlement, in which it may be committed, came into the poſſeſſion of the Britiſh government, the puniſhment to be adjudged againſt the priſoner ſhall be regulated by the law which was in uſe, when the ſettlement, wherein the offence ſhall have been committed, came into the poſſeſſion of the Britiſh government."

Section III. C. 4. Proviſo, if the offender be an European, or deſcendant of an European, and the puniſhment, under the Mahomedan law and this regulation, be more ſevere than the puniſhment in uſe when the ſettlement came into poſſeſſion of the Britiſh government.

"The ſuperintendent and deputy ſuperintendent at Chandernagore, and the commiſſioner and deputy commiſſioner at

Section IV. What complaints may be heard and de-

termined, as heretofore, by the magiſtrate and deputy magiſtrate.

Chinſurah, in their capacity of magiſtrate and deputy magiſtrate, for thoſe ſettlements reſpectively, are empowered to hear and determine, as heretofore, without reference to the court of circuit, all complaints and proſecutions for offences, not of a heinous nature; ſuch as abuſive language, calumny, inconſiderable aſſaults, or affrays, petty theſts, and larceny, unaccompanied with open violence, or other aggravating circumſtance; and to puniſh the offender when convicted, according to the rules and practice hitherto obſerved in the courts of criminal judicature at the above ſettlements; provided that ſuch puniſhment ſhall, in no inſtance, exceed thirty rattans, in the infliction of corporal puniſhment; or impriſonment for one year; or a fine to government of two hundred ſicca rupees, to be regulated, within ſuch limitation, by the degree of the offence, and the ſituation and circumſtances of the offender; and to be in every inſtance declared commutable to impriſonment for a definite period, in caſe the fine ſhould not be paid; or recovered from the property of the offender."

Limitation of puniſhment in ſuch caſes.

Section V. In what caſes perſons accuſed to be committed, or held to bail, for trial before the courts of circuit.

"PERSONS accuſed of murder, robbery, burglary, arſon, counterfeiting of the coin, or any other heinous offence, the preſcribed or eſtabliſhed puniſhment of which may exceed the penalties authorized to be inflicted by the magiſtrate in the preceding ſection, if, upon the inquiry of the magiſtrate, or his deputy, there appear to be ſufficient grounds for believing the crime charged to have taken place, and the priſoner or priſoners to have been concerned in the perpetration of it, ſhall be committed to cloſe cuſtody, (or if the offence be of a bailable nature, ſhall be held to bail,) for trial before the court of circuit, at the next jail-delivery for the ſettlement in which the crime may have occurred."

Section VI. What rules to be obſerved in caſes referred to

"THE proviſions contained in Sections V, VI, and VII, of Regulation IX, 1793, and in the ſeveral ſections of Regulation

IX,

IX, 1796, ſhall be conſidered the general rules for the guidance of the magiſtrate, and deputy magiſtrate, of Chandernagore, and Chinſurah, in the caſes referred to in the foregoing ſection. The court of Nizamut Adawlut may, however, authorize any modifications, which, from local circumſtances, ſhall appear neceſſary; and are further declared competent to furniſh the magiſtrate of the above ſettlements with any inſtructions, not contrary to the general regulations in force, which may appear adviſable, for the due execution of any part of his preſcribed duties, or thoſe of his deputies, whether relative to criminal juſtice, or to police."

to preceding ſections.

Nizamut Adawlut may authorize any neceſſary modifications.

And iſſue any inſtructions to magiſtrates, not contrary to general regulations.

"Two general jail-deliveries, for the ſettlements of Chandernagore and Chinſurah, ſhall be holden annually by one of the judges of the court of circuit for the diviſion of Calcutta, immediately after the half yearly jail-delivery for zillah Hooghly, and at ſuch place as the court of Nizamut Adawlut may direct, for the trial of all perſons charged with crimes and miſdemeanors, and committed or held to bail, to be tried by the court of circuit, under the proviſions contained in this regulation."

Section VII. Half yearly jail deliveries for Chandernagore and Chinſurah, when and where to be held.

For the adminiſtration of civil and criminal juſtice to the European and native inhabitants of Serampore, there are, as heretofore, two courts; denominated the European court; and the cutcherry or native court. The former is compoſed of a judge and magiſtrate, and of a recorder, or regiſter, appointed and removable only by the Governor General in Council. Two officers are alſo attached to the court, whoſe duty it is to atteſt the proceedings of the court; and to verify them, when required, on oath. The native court is ſuperintended by a ſeparate judge and magiſtrate, appointed by the Governor General in Council, and removable by his order only. The rules preſcribed for the determination of civil ſuits in theſe courts, ſubject to an appeal to the commiſſioner

Civil and criminal courts eſtabliſhed at Serampore.

at

at Serampore, in cauſes exceeding fifty ſicca rupees, if tried in the native court, or one hundred and fifty rupees, if tried in the European court; and with liberty of a further appeal to the Sudder Dewanny Adawlut, if the amount or value adjudged, againſt the party deſiring to appeal, exceed five thouſand ſicca rupees; cannot, with propriety, be ſtated in this place. But the following ſections of the regulation referred to,* compriſe the rules enacted for the criminal juriſdiction of the magiſtrates, and commiſſioner; as well as for extending the juriſdiction of the Calcutta court of circuit, and Nizamut Adawlut, to Serampore.

R. — 1808. Section XIII. Provisions for administering criminal justice in Chandernagore and Chinsurah, extended to Serampore.

"*Firſt.* The proviſions contained in Regulation XVI, 1805, for the adminiſtration of juſtice in criminal caſes within the ſettlements of Chandernagore and Chinſurah, and for extending the juriſdiction of the Calcutta court of circuit, and court of Nizamut Adawlut, over thoſe ſettlements, are hereby extended to the ſettlement of Serampore, with the following modifications.

What powers to be exercised by magistrates at Serampore, and what rules to guide them.

Second. The magiſtrates of the European and native courts at Serampore, in the cognizance of criminal offences, ſhall reſpectively exerciſe, over the perſons ſubject to their juriſdiction, the ſame powers as are veſted in the magiſtrates of Chandernagore and Chinſurah reſpectively, by the regulation abovementioned; and ſhall be guided by the ſame rules in the performance of their duties, as far as the ſame may be applicable.

In cases not provided for by Regulation XVI, 1805, magistrates at Serampore how to be guided.

Third. In all caſes not provided for by Regulation XVI, 1805, or by the preſent regulation, the magiſtrates of the European and native courts at Serampore ſhall be guided by the

* This regulation not being yet publiſhed, the number of it cannot be ſpecified. But it will probably be the laſt regulation of 1808, as well as the lateſt that can be noticed in this part of the Analyſis.

laws,

laws, rules, and forms, which were in force before the subjection of that ſettlement to the Britiſh Government.

What powers to be exerciſed by the commiſſioner at Serampore, in criminal matters, and in ſuperintendence of the police.

Fourth. "The commiſſioner at Serampore ſhall poſſeſs a concurrent juriſdiction with that of the magiſtrates of the European and native courts, in all matters of a criminal nature; as well as a general ſuperintendence of the police; and he is hereby declared competent to interpoſe his authority and controul, whenever the ſame may appear neceſſary."

Section XIV. Jail-deliveries for Serampore at what period, and by whom, to be held.

"Two general jail-deliveries for the ſettlement of Serampore ſhall be holden annually, at Serampore, by one of the judges of the court of circuit for the diviſion of Calcutta, immediately after the half yearly jail-delivery for the ſettlements of Chandernagore and Chinſurah."

Section XV. What duties preſcribed in Regulation XVI, 1805, to be performed by the commiſſioner at Serampore.

"The commiſſioner at Serampore ſhall perform the duties preſcribed to the magiſtrate of Chandernagore and Chinſurah by Sections VIII, IX, and X, Regulation XVI, 1805, and generally the whole functions of the magiſtrate, preſcribed by that regulation, which may not more properly appertain to the magiſtrates of the European and native courts at Serampore."

SECTION IV.

ON THE POLICE.

Preamble to R. XXII, 1793. Landholders and farmers of land formerly bound to keep the peace, and anſwerable for robberies, in Bengal, Behar, and Oriſſa.

AT the time of forming the decennial ſettlement of the land revenue, for the provinces of Bengal, Behar, and Oriſſa, in the year 1790, the landholders and ſudder farmers of land, in conformity with former uſage, were bound, by a clauſe in their engagements, to keep the peace; and in the event of any robbery being committed in their reſpective eſtates, or farms, to produce the robbers, and property plundered. But the general impracticability of enforcing this engagement rendered it of little effect; and in many inſtances robberies, and other breaches of the peace, were found to be promoted by colluſion between the perpetrators of them, and the police officers entertained by the landholders and farmers of land, in virtue of the clauſe referred to. With a view therefore to correct this abuſe, and to afford more effectual protection to the perſons and property of the people, a new ſyſtem of police was eſtabliſhed by government on the 7th December 1792; the rules of which with amendments, were re-enacted in Regulation XXII, 1793. By Section II, of this regulation, the police of the country was declared to be under the excluſive charge of the officers who might be appointed to the ſuperintendence of it on the part of government; and the landholders and farmers of land, who were before bound to keep up eſtabliſhments of police officers for the preſervation of the peace, were required to diſcharge them, and prohibited

This reſponſibility found of little effect, and conſequent reaſons for a new ſyſtem of police, introduced in December 1792, and eſtabliſhed, with amendments, by R. XXII, 1793.

R. XXII, 1793. § II. Police declared to be under the excluſive charge of officers of government. Landholders and farmers required to diſcharge their police eſtabliſhments, and not to entertain ſuch in future.

from

from entertaining ſuch eſtabliſhments in future. It was further declared by Section III, that "landholders and farmers of land are not in future to be conſidered reſponſible for robberies, committed in their reſpective eſtates or farms, unleſs it ſhall be proved that they connived at the robbery; received any part of the property ſtolen, or plundered; harboured the offenders; aided, or refuſed to give effectual aſſiſtance to prevent, their eſcape; or omitted to afford every aſſiſtance in their power to the officers of government for their apprehenſion; in either of which caſes they will be ſubject to be proſecuted perſonally for the crime, or offence, before the court of circuit; and if convicted, their lands and effects will be liable to be ſold, at the diſcretion of the Governor General in Council, to make good the value of the property ſtolen, or plundered, to the owner." The zillah magiſtrates were at the ſame time required to divide their reſpective zillahs, including the rent-free lands,* into police juriſdictions. Each juriſdiction to be ten coſs, (twenty miles,) except where local circumſtances might render it adviſable to form them of greater or leſs extent. The guarding of each juriſdiction to be committed to a darogah, or ſuperintendent, with an eſtabliſhment of police officers, to be paid by government. The darogahs, with their eſtabliſhments, to be ſtationed in the centre of their reſpective juriſdictions, unleſs, for ſpecial reaſons, it be thought expedient to fix them in any other ſituation. And the magiſtrates to endeavour to form the juriſdictions in ſuch a manner, as to bring the principal towns, bazars, and gunges in the centre of them; that the police eſtabliſhments may protect ſuch places, as well as the circumjacent country. The police juriſdictions were ordered to be numbered and named after the places at which the darogahs and their eſtabliſhments might be ſtationed. And the magiſtrates were directed not to change the names or numbers of

§ III. Reſponſibility of landholders and farmers modified in conſequence.

V. § I. Zillahs to be divided by the magiſtrates into police juriſdictions. Their extent, and by whom to be ſuperintended.

§ V. Juriſdictions to be numbered and named.

* *Lackheraj*, which ſhould be rendered *tax-free*, rather than *rent-free*, as lands of this deſcription are not exempt from rent to the proprietor, but from the public aſſeſſment only.

the

the juriſdictions, nor to alter the limits of them, without the ſanction of the Governor General in Council. The magiſtrates were authorized to nominate the darogahs in the firſt inſtance; and to fill up all future vacancies; under reſponſibility for ſelecting perſons duly qualified. But no perſon to be appointed darogah without giving ſecurity for his appearance in the ſum of one thouſand rupees; viz. himſelf five hundred, and two reſponſible perſons two hundred and fifty rupees each. Theſe original rules for the police juriſdictions of the ſeveral zillahs in Bengal, Behar, and Oriſſa, (excluſive of Cuttac) and for the appointment of the police darogahs, are ſtill in force. But further proviſions, to prevent the removal of thoſe officers, without proof of incapacity or miſconduct to the ſatisfaction of the Governor General in Council, have been ſuperſeded by the general rules contained in Regulation V, 1804, and referred to in the firſt part of this Analyſis* for the appointment and removal of the native officers of government in the Judicial, Revenue, and Commercial Departments. "The magiſtrates of the cities of Dacca, Moorſhedabad and Patna, were directed by Section XXVI, Regulation XXII, 1793, to divide thoſe cities, and the adjacent places ſubject to their reſpective juriſdictions, into wards. Each ward to be guarded by a darogah, with a proper eſtabliſhment; and the darogahs to be under the immediate authority of a cutwal. The wards to be numbered and named, and their numbers, names, and limits not to be changed without the ſanction of the Governor General in Council; as preſcribed with reſpect to the zillah juriſdictions. The rules for the nomination of the zillah darogahs were alſo declared applicable to the darogahs of wards, and city cutwals; except that no perſon ſhould be appointed cutwal of either of the cities ſpecified, without giving ſecurity for his appearance in the ſum of five thouſand rupees, viz. himſelf two thouſand

§. VI. Police darogahs to be nominated by the magiſtrates; and ſecurity to be given by them.

How far the above original rules are ſtill in force.

R. V. 1804, § X. Police darogahs ſince included in general rules for the appointment and removal of native officers in the Judicial Department.

R. XXII, 1793, § XXVI. Cities of Dacca, Moorſhedabad, and Patna, ordered to be divided into wards. Each ward to be ſuperintended by a darogah, ſubject to the city cutwal.

§ XXVII. Wards to be numbered and named.

§ XXVIII. Rules for nomination of city cutwals, and darogahs; and ſecurity to be given by the former.

* Page 167.

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five hundred; and two reſponſible perſons, one thouſand two hundred and fifty each.

Powers and duties of the police officers in Bengal, Behar, and Oriſſa, to be hereafter ſtated.

THE powers and duties of the police officers appointed under the above rules for the provinces of Bengal, Behar, and Oriſſa, being, in many reſpects, the ſame as thoſe of the police officers appointed in the province of Benares, and in the ceded and conquered territory, within the diviſions of Bareilly and Benares; it will be convenient to ſtate, in the firſt inſtance, the general proviſions made for the police of thoſe diviſions.

B. R. XVII, 1795. Preamble and Section II. Syſtem of police formerly eſtabliſhed in the province of Benares.

BY Regulation XVII, 1795, the police of the province of Benares, was placed under the joint charge of the tehſeeldars, or native collectors of the public revenue, and, ſubordinately to them, of the land-holders and farmers of land, who, by their engagements to government, were bound to maintain the peace and apprehend all diſturbers of it, in their reſpective eſtates and farms; as well as to recover, or make good the value of, all property robbed or ſtolen within their boundaries. The tehſeeldar was accordingly declared reſponſible for robberies or thefts in the firſt inſtance; and the land-holders and farmers to the tehſeeldar; under a proviſion that for night robberies in open roads or woods, neither the tehſeeldar, land-holder, or farmer, ſhould be held reſponſible, unleſs it be proved that they had ſuch knowledge of circumſtances, as might have enabled them to prevent the robbery or theft; but that for theſts or robberies in inhabited places they ſhould be conſidered liable to reſponſibility, whether notice of the arrival of the owners of the property ſtolen, or robbed, have been given to them or not; if, under the circumſtances of the caſe, the magiſtrate be of opinion that the theft or robbery was committed with their connivance; or that the perpetration of it be aſcribable to their want of care or vigilance. The limits of each tehſeeldar's revenue juriſdiction, with the lakheraj lands included therein, were to conſtitute a police juriſdiction: the guarding

Section III.

Section IV.

of which was committed generally to the tehſeeldar, and under him, to the land-holders and farmers, for their reſpective limits. At the ſame time proviſion was made for the police of the city of Benares, and of the towns of Mirzapore, Ghazeepore and Jounpore, by the appointment of cutwals, and darogahs of wards, with eſtabliſhments payable by government, in the ſame manner, as for the cities of Dacca, Moorſhedabad, and Patna. This ſyſtem was extended to the ceded provinces, by Regulation XXXV, 1803, with a proviſion, that whenever police eſtabliſhments for cities, large towns, or principal gunges (the charge of which was to be defrayed by government) ſhould be employed within the juriſdiction of a tehſeeldar, they ſhould be conſidered as fully under his orders, as the police eſtabliſhments entertained by himſelf; excepting cities or towns where the magiſtrates reſide, the police officers of which were to be under the excluſive authority of the magiſtrate. It was further provided, that the whole of the rules of police, relative to tehſeeldars, ſhould be equally applicable to huzoory land-holders, whoſe revenue, inſtead of being collected by a tehſeeldar, is paid immediately into the collector's treaſury. This laſt proviſion was alſo applied to the huzoory zemindars in the province of Benares by Section V, Regulation VII, 1807. And the whole of the rules enacted for the police of the ceded provinces were extended to the conquered provinces in the Doab, and on the right bank of the Jumna, as well as to Bundlecund, by Section IX, Regulation IX, 1804; with a proviſion that nothing therein contained ſhould be conſtrued to exonerate the zemindars, farmers, or other holders of land, from the duties and reſponſibility impoſed on them by the terms of their exiſting engagements, or by the ancient and eſtabliſhed uſages of the country, which may not have been ſuperſeded by competent authority, for the prevention of robberies and other diſorders, and for the maintenance of peace and good order within their reſpective limits.

Sections XXIII, XXIV, XXV.

C. P. R. XXXV, 1803, § II, III, IV. The ſame ſyſtem extended to the ceded provinces.

§ XXIII. With proviſion reſpecting cities, large towns, and principal gunges.

§ XXVI. Further proviſion reſpecting huzoory land-holders paying revenue into the collector's treaſury.

B. R. VII, 1807, § V. Applied alſo to huzoory land-holders in Benares.

C. P. R. IX, 1804, § IX. Rules for police of ceded provinces extended to conquered provinces in the Doab, and on the right bank of the Jumna; as well as to Bundlecund.

Preamble to C. P. R. XIV, 1807. Objections found to the tehſeeldary ſyſtem of police.

THE tehſeeldary ſyſtem of police thus eſtabliſhed in the province of Benares, and in the ceded and conquered provinces within the diviſions of the Bareilly and Benares courts of circuit, was found inefficient for the purpoſes intended by it; and open to material objections, as well from a proper eſtabliſhment of police officers not being maintained by the tehſeeldars; and from ſuch as were appointed by them not being ſufficiently under the controul of the magiſtrates; as from the frequency of alterations in the extent of their juriſdictions; in conſequence of ſome of the eſtates compoſing them becoming *huzoory*, under the option given to the landholders to pay their revenue directly into the treaſury of the collector. Such eſtates were, in many inſtances, too ſmall to admit of a ſeparate police eſtabliſhment being kept up by the proprietors of them; and were often intermixed with other eſtates, either ſubject to a tehſeeldar, or paying revenue immediately to the collector. Compact local juriſdictions, which are eſſential for a good police, were therefore incompatible with ſuch an arrangement; and could not be obtained without reſuming the general charge of the police of the country from the tehſeeldars, and huzoory land-holders, and placing it under officers on the part of government, ſubject to the immediate controul of the zillah and city magiſtrates: ſtill leaving the duties of the local police to be performed by the land-holders and farmers of land, within their reſpective eſtates and farms, ſubordinately to the officers of government. Such parts of the regulations above cited as declared the police of the province of Benares, or of the ceded and conquered provinces, in the diviſions of Bareilly and Benares, to be under charge of the tehſeeldars, and huzoory land-holders, or which preſcribed their duties as principal officers of police, were accordingly reſcinded by Sections II, and III, Regulation XIV, 1807; and the following rules were eſtabliſhed by the ſucceeding ſections of that regulation.

C. P. R. XIV, 1807. §. II, III. Police reſumed from charge of the tehſeeldars and huzoory land-holders.

"FROM

Section IV. And new ſyſtem eſtabliſhed from commencement of Fuſſily year 1215.

"FROM the commencement of the enſuing Fuſſily year 1215, the charge of the police of the country, throughout the whole of the provinces ſpecified in the two preceding ſections, ſhall be veſted, ſubject to the controul of the zillah and city magiſtrates, in the officers who may be appointed to the ſuperintendence of it on the part of government; and ſubordinately to them, in the landholders and farmers of land, who, by their engagements are reſponſible for the preſervation of the peace, within the limits of their reſpective eſtates and farms."

Section V, C. 1. Zillahs to be divided into compact police juriſdictions.

"THE ſeveral zillahs, in the diviſions of the Benares and Bareilly courts of circuit, together with the mehauls under the magiſtrate of the city of Benares, ſhall be divided into compact police juriſdictions; including, indiſcriminately, the eſtates of huzoor tehſeel land-holders, and of mehauls paying revenue through a tehſeeldar; as well as lakheraj lands, of every denomination, held exempt from the public aſſeſſment."

Section V. C. 2. To be of two deſcriptions, ſudder and moſuſſil.

"THE police juriſdictions ſhall be of two deſcriptions. Firſt, ſuch as are eſtabliſhed at the ſtation where the zillah or city court is held; and which ſhall be denominated the "ſudder police juriſdiction." Secondly, ſuch as are eſtabliſhed at any place not being the ſtation where the zillah or city court is held; and which ſhall be denominated the "moſuſſil police juriſdiction."

Section VI, C. 1. Sudder police juriſdictions, what to comprife.

"THE ſudder police juriſdictions ſhall comprife the city or town, at which the zillah or city court is held; together with ſuch part of the ſuburbs and environs, as it may be judged expedient to place under the ſuperintendence of a cutwal, with an eſtabliſhment of darogahs, jemadars, burkundazes, and chokeedars, or other watchmen, proportionate to the extent and population of the juriſdiction."

Section VI. C. 2.

"THE moſuſſil police juriſdictions ſhall reſpectively comprife

priſe a conſiderable town or gunge, at which the ſuperintendent of the juriſdiction ſhall be ſtationed; together with ſuch part of the adjacent country, as it may be deemed adviſable to place under the ſuperintendence of a darogah, with an eſtabliſhment of jemadars, burkundazes, and chokeedars, or other watchmen proportionate to the extent and population of each juriſdiction."

What to be included in moſuſſil police juriſdictions.

"In propoſing a diſtribution of moſuſſil police juriſdictions, and the requiſite eſtabliſhments for them, the magiſtrates are to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country; but the latter ſhall, in no inſtance, exceed ten coſs ſquare, for any one police juriſdiction; unleſs peculiar local circumſtances ſhall appear to require it, in which caſe they are to be reported, through the court of Nizamut Adawlut, for the conſideration of government."

Section VI, C. 3.
Circumſtance to be conſidered in propoſing moſuſſil juriſdictions.
And limitation of their extent.

"If the principal town or gunge, included in any moſuſſil police juriſdiction, ſhall, from its extent and population, appear to require a cutwalee eſtabliſhment; or if it appear expedient, in any inſtance, to include more than one conſiderable town or gunge within a moſuſſil police juriſdiction, and to ſtation a naib darogah, or a jemadar, with a ſubordinate eſtabliſhment of burkundazes, chokeedars, or other watchmen, at the town or gunge, which may not be the ſtation of the darogah of the juriſdiction; the magiſtrates ſhall propoſe ſuch arrangement, through the court of Nizamut Adawlut, for the orders of the Governor General in Council."

Section VI, C. 4.
Proviſion for any requiſite cutwalee eſtabliſhment, and ſubordinate police eſtabliſhment, in moſuſſil juriſdictions.

"The police juriſdictions of the ſeveral zillahs, as well as thoſe under the magiſtrate of the city of Benares, ſhall be numbered; and named after the places at which the ſuperintending officers are ſtationed. The magiſtrates ſhall, as ſoon as poſſible after the receipt of this regulation, ſubmit a ſtatement of police

Section VII. C. 1.
Police juriſdictions to be numbered and named.

Statements to be ſubmitted by magiſtrates on receipt of this regulation.

juriſdictions, formed according to the proviſions of it, together with a ſtatement of the requiſite police eſtabliſhments for each juriſdiction, through the courts of circuit, to the court of Nizamut Adawlut; and after obtaining the approbation of the Governor General in Council thereto, the names, numbers, limits, or eſtabliſhments, of the ſeveral juriſdictions, ſhall not be changed without the previous ſanction of government."

Section VI, C. 2. Power reſerved to government of alte ring or altering any police juriſdiction or eſtabliſhment.

"PROVIDED, that it ſhall be, at all times, competent to the Governor General in Council to order the diſcontinuance of any police juriſdiction, or eſtabliſhment, which may appear to him unneceſſary; or any alteration therein, which he may deem expedient.

Section VIII. C. 1. Cutwals and darogahs by whom to be nominated.

"THE magiſtrates ſhall nominate the cutwals, and police darogahs, through the court of Nizamut Adawlut, for the approbation of the Governor General in Council. They will in conſequence be held reſponſible for ſelecting perſons duly qualified; and are required, in every inſtance, to report to the Nizamut Adawlut, any information obtained by them reſpecting the paſt employments, character, and qualifications, of the perſons propoſed by them.

Section VIII. C. 2. Security to be given by cutwals.

"THE cutwals of the city of Benares, and town of Mirzapore, are already required, by Section XXV, Regulation XVII, 1795, to give ſecurity for their appearance, in the ſum of five thouſand rupees; namely, the cutwal himſelf in two thouſand five hundred, and two reſponſible perſons in one thouſand two hundred and fifty each. The cutwal of the town of Juanpore is required, by the ſame ſection, to give ſecurity in half the above amount. It is further hereby provided, that no perſon ſhall be appointed cutwal of the cities of Allahabad, Agra, Furruckabad, or Bareilly, unleſs he ſhall have given ſecurity for his appearance in the ſum of five thouſand rupees; viz. himſelf in two thouſand five hundred; and two reſponſible

perſons

perſons in one thouſand two hundred and fifty each. The cutwals appointed to any other ſtations under this regulation ſhall previouſly give ſecurity for their appearance in the ſum of two thouſand five hundred rupees; namely, the cutwal himſelf in one thouſand two hundred and fifty rupees; and two reſponſible perſons in an equal amount."

And by police darogahs.

"The ſeveral police darogahs, who may be appointed under this regulation, ſhall give ſecurity for their appearance in the ſum of one thouſand rupees; namely, the darogah himſelf in five hundred, and two reſponſible perſons in two hundred and fifty each."

Form of declaration to be ſubſcribed by cutwals and police darogahs. And form of ſunnud to be granted to them.

The fourth and fifth clauſes of the ſection laſt quoted alſo preſcribe a form of declaration to be ſubſcribed by every cutwal and police darogah, previouſly to entering upon the execution of the duties of his office; and a form of ſunnud to be granted to them by the magiſtrate, on their nomination being approved by the Governor General in Council. No perſon, receiving ſuch ſunnud, is removable without the ſanction of Government, communicated through the court of Nizamut Adawlut, in conformity with Section X, Regulation V, 1804; Section XII, of which regulation, is alſo declared applicable to the mohrirs, jemadars, burkundazes, chokeedars, and other officers, appointed on the part of Government, to act under the cutwals and police darogahs; who are thereby authorized to nominate their ſubordinate officers for the approbation of the magiſtrate; and to remove them on ſufficient cauſe, ſhewn to his ſatisfaction.

Not removable without the ſanction of government in form preſcribed by Section X, Regulation V, 1804.

Section IX. Proviſion of Section XII, Regulation V, 1804, applicable to officers acting under cutwals and police darogahs.

R. XIV, 1807, § XI. Rules of police for ſudder juriſdictions of the ſeveral zillahs in the Bareilly and Benares diviſions.

Comprising alſo the rules of po

The following Clauſes of Section XI, Regulation XIV, 1807, contain the rules of police enacted for the ſudder juriſdictions of the ſeveral zillahs within the diviſions of Bareilly and Benares; and compriſe, with ſome additions and modifications, the rules contained in Regulation XXII,

lice for cities of Dacca, Moorſhedabad and Patna.

1793, for the police of the cities of Dacca, Moorſhedabad and Patna.

Clauſe 2. Each juriſdiction to be divided into wards. And by whom to be guarded.

"THE city or town conſtituting, with its ſuburbs, the ſudder police juriſdiction, ſhall be divided into wards. Each ward to be guarded by a police darogah, with a jemadar, and an eſtabliſhment of burkundazes, chokeedars, or other watchmen. The ſeveral darogahs to be under the ſuperintendence of a cutwal, and the whole under the immediate control of the magiſtrate."

Clauſe 3. Watchmen in what places to be ſtationed.

"THE chokeedars and other watchmen are to be ſtationed by the cutwal, as the magiſtrate may direct; and are particularly to watch the entrances of ſtreets and paſſages, places where ſpirituous liquors are ſold, and any places where numbers of people occaſionally aſſemble; or where, from any circumſtances there may be reaſon for ſpecial vigilance, to prevent a breach of the peace, or apprehend the perſons by whom it may be broken."

Clauſe 4. Rule for patroles.

"THE jemadars of the ſeveral wards, with half of the eſtabliſhment of burkundazes, and the darogahs with the other half of their eſtabliſhments, ſhall patrole their reſpective wards without intermiſſion; the one from ſun-ſet until twelve o'clock at night; the other from twelve o'clock at night until day-light. The patroles are to move about with as little noiſe as poſſible, that thieves and other diſorderly perſons may not be apprized of their approach. The patroles of the ſeveral wards, and ſuch part of the ſtationary watchmen as the cutwal ſhall appoint, are to be furniſhed with a ſinghara or horn, which they are to ſound when they meet with robbers, or other perſons guilty of a breach of the peace, and have occaſion to give the alarm to each other, or to the inhabitants of the ward, that they may co-operate for the apprehenſion of the offenders. The cutwal is to be careful

that

that the ſtationary watchmen, and the darogahs and their officers, perform the eſſential duties preſcribed in this clauſe, regularly and properly; and to report to the magiſtrate every inſtance in which they may be guilty of nĕgligence, or miſconduct, in the diſcharge of them."

Clauſe 5. Mohullad r and mohulladarin, to whom ſubject; and duty to be performed by them.

"To aſſiſt the darogahs in obtaining the earlieſt intelligence of any robbers, or other offenders, who may be concealed, or have taken up their reſidence, within their reſpective wards, the mohulladar, and mohulladarin, of each ward, ſhall be ſubject to the orders of the darogah; to whom they ſhall convey immediate information of any offenders who may be found in their reſpective wards. It ſhall alſo be the duty of the bhutiarehs, or other perſons in charge of the public ſerays, and of the ghaut mangees, to deliver in to the cutwal's office, or to the darogah of the ward, daily reports of the arrival and departure of travellers and of all perſons of ſuſpicious appearance."

Alſo by bhutiarehs and ghaut mangees.

Clauſe 6. Private watchmen what duties to perform; and how far ſubject to cutwals and darogahs.

"All private watchmen, entertained by individuals, for guarding their houſes, ſhops, or other premiſes, within the cutwalee juriſdiction, are required to act in concert with the officers of police in maintaining the peace; and are declared ſubject to the orders of the cutwal, and of the darogahs of their reſpective wards, in all matters relative to the police. If ſuch watchmen be found deficient in performing the duties required from them, they ſhall be diſmiſſed at the requiſition of the magiſtrate; who is alſo empowered to ſee that none but proper perſons are appointed in their ſtead."

Power veſted in magiſtrates, reſpecting their appointment and removal.

Clauſe 7. What perſons the cutwals and darogahs are to apprehend; and how to proceed with them.

"It ſhall be the duty of the cutwal, and of the darogahs of wards, to apprehend all murderers, robbers, houſe-breakers; thieves, pick-pockets, and perſons charged with, or ſuſpected of, crimes, or miſdemeanors, involving a breach of the peace; as well as all vagrants who may be lurking about their reſpec-

ſive juriſdictions, without any oſtenſible means of ſubſiſtance, and who cannot give a ſatisfactory account of themſelves. All ſuch perſons, who may be apprehended by the darogahs between ſun-riſe and ſun-ſet, ſhall be conveyed to the cutwal's office immediately on their apprehenſion. If any ſuch perſons ſhall be apprehended between ſun-ſet and ſun-riſe, they ſhall be conveyed to the cutwal's office, early in the morning after the night on which they may have been apprehended. The cutwal ſhall every forenoon, by eleven o'clock, take before the magiſtrate all perſons who may have been apprehended by him, or by the darogahs, during the night, or, ſubſequently to his report on the preceding day. The cutwal and darogahs are prohibited detaining, in cuſtody, any perſons whom they may have apprehended, beyond the time ſpecified, without a ſpecial order from the magiſtrate."

Clauſe 8. In what caſes the cutwals and darogahs may diſcharge perſons apprehended by them, on bail, or on delivery of a razeenamah.

And how to proceed in ſuch caſes.

"THE cutwal and darogahs ſhall not diſcharge any perſons whom they may have apprehended, without authority from the magiſtrate for their releaſe; excepting perſons who may have been apprehended for petty offences of a bailable nature, and who ſhall tender ſufficient bail for appearance before the magiſtrate at the time preſcribed; or perſons charged with trivial offences, ſuch as abuſive language, ſlight treſpaſſes, and inconſiderable aſſaults or affrays; whom the cutwal and darogahs are permitted to diſcharge, if, previouſly to the time preſcribed for carrying them before the magiſtrate, the complainants ſhall voluntarily deliver a razenamah, or writing deſiring to withdraw the complaint; and the defendants ſhall conſent to the complaint being withdrawn. The razenamahs, in ſuch caſes, ſhall be atteſted by two creditable witneſſes; and are to be tranſmitted by the darogahs, as well as all bail bonds, and recognizances, on the morning following the night or day on which they may have been executed, to the cutwal; who ſhall ſubmit them to the magiſtrate, the ſame morning on which he may have received them; together with any ſuch

writings,

writings, relating to ſimilar caſes, that may have been entered into before himſelf."

Clauſe 9. By what rules cutwals and darogahs to be guided in iſſuing proceſs, and taking bail, and recognizances.

"In receiving written complaints, iſſuing proceſs of ſummons or warrant, taking bail when tendered in caſes of a bailable nature, and taking recognizances from proſecutors and witneſſes, when requiſite; the cutwal and darogahs of wards, are to be guided by the rules enacted for the guidance of the police officers in general, in Sections XII, XIII, XIV, and XV, of Regulation IX, 1807. They are alſo to obſerve the reſtriction contained in Section XIV, of that regulation, that no ſummons or other proceſs ſhall be iſſued by any police officer, without ſpecial inſtructions from the magiſtrate, on any charge of adultery, fornication, calumny, or other offence, not involving a breach of the peace."

In what caſes no proceſs to be iſſued without ſpecial inſtructions from the magiſtrate.

Clauſe 10. Reſtrictions upon cutwals and darogahs, againſt making any judicial inquiry, paſſing ſentence, or inflicting puniſhment.

"The duty of the cutwal and darogahs of wards, with regard to perſons charged with, or found in the act of committing, crimes or miſdemeanors, is reſtricted, in the firſt inſtance, to apprehending them and bringing them before the magiſtrate, either in cuſtody, or under bail, as preſcribed. They are not to make any inquiry into the truth of charges preferred to them, without ſpecial inſtructions from the magiſtrates; nor are they in any caſe to paſs ſentence, or impoſe a fine, or make any exaction, or inflict any puniſhment, upon any perſon whatever."

Clauſe 11. Explanation of reſtrictions in preceding Clauſe. Not meant to prevent inqueſts; and other authoriſed inquiries.

"The reſtriction in the preceding clauſe, is not meant to prohibit the cutwal and police darogahs, from taking inqueſts in caſes of murder or other unnatural death; as preſcribed by Section IX, Regulation IV, 1797; and Section XXV, Regulation XXXV, 1803; nor to prohibit their making the local inquiry directed in Section XVIII, Regulation IX, 1807, on information being received of a recent robbery, or other violent crime, within their reſpective juriſdictions; nor to prevent their taking the voluntary confeſſion of perſons apprehend-

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ed by them, in the manner authorized by Section XVII. Regulation IX, 1807. But no perſon ſhall be detained in cuſtody by them, for any of the purpoſes ſtated, without being taken before the magiſtrate, as required by clauſe ſeventh of this ſection."

Clauſe 12. For what acts cutwals, darogahs, and their officers liable to a criminal proſecution, or civil action.

"THE cutwals and darogahs, and all officers under their authority, ſhall be liable to a criminal proſecution before the magiſtrate and court of circuit, or to a civil action in the Dewanny Adawlut, for corruption, extortion, or oppreſſion; and for all acts done by them in oppoſition to this regulation, or to the proviſions of any other regulation in force."

C. P. R. XIV. 1807. § XII, C. 4. Third and Fourth Clauſes above cited, extended to towns and gunges, at which darogahs of moſuſſil police juriſdictions are ſtationed in Bareilly and Benares diviſions.

And Sixth Clauſe, applicable to all private watchmen in moſuſſil juriſdictions.

THE rules for ſtationary watchmen and nightly patroles, in the ſudder police juriſdictions of the Bareilly and Benares diviſions, contained in the third and fourth clauſes above cited, are extended by the fourth clauſe of Section XII, Regulation XIV, 1807, to the towns and gunges, at which the darogahs of the moſuſſil police juriſdictions may be ſtationed. The ſixth clauſe is alſo declared applicable to all private watchmen, entertained by individuals for guarding their houſes, ſhops, or other premiſes; within the towns, gunges, or other places, forming part of any moſuſſil police juriſdictions in the zillahs which compoſe the two diviſions ſpecified. * And by a ge-

R. XXII. 1793. § XIII, XIV;

* The proviſions contained in the three clauſes referred to, have not been expreſsly enacted in any regulation yet paſſed, for the police of Bengal, Behar, and Oriſſa. But the detailed inſtructions in the two firſt clauſes mentioned, may be applied, at the diſcretion of the magiſtrates, to any towns or gunges, in which there are cutwalee eſtabliſhments; or any ſufficient eſtabliſhment of ſtationary watchmen and patroles; and the whole of the zillah magiſtrates are authorized to cauſe the diſmiſſion of any of the village watchmen who ſhall not perform the duties of police required from them. It is further provided by the fourth clauſe of Section XII, Regulation XIV, 1807, for the diviſions of Bareilly and Benares, and virtually by the firſt clauſe of Section XIV, Regulation XII, 1807, for the other provinces, that the police officers maintained on the part of government ſhall be aſſiſted, in the duties of watching and patrolling, by the village guards and watchmen, who by Section XIII, Regulation XXII. 1793, Section XIII, B. Regulation XVII, 1795, and Section XIII, C. P. Regulation XXXV, 1803, are declared ſubject to the orders of the police darogahs.

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neral rule extended to the whole of the provinces, all pykes, chokeedars, and other village watchmen, of whatever deſcription, are declared ſubject to the orders of the police darogah. They are required to apprehend, and ſend to the darogah, any perſons who may be taken in the act of committing murder, robbery, houſe-breaking or theft; or againſt whom a hue and cry ſhall have been raiſed. If is likewiſe declared to be their ſpecial duty to convey to the darogah of the juriſdiction immediate intelligence of any robbers concealed in their reſpective villages, or the country adjacent; as well as of any vagrants or other perſons lurking about the country, without any oſtenſible means of ſubſiſtence; or who cannot give a ſatisfactory account of themſelves. Village watchmen who ſhall not act in conformity to this rule, are to be diſmiſſed from their ſtations, by the landholders or other perſons employing them, on the requiſition of the magiſtrate; in addition to the legal puniſhment they may incur, if proved to have aſſiſted in harbouring any offender or ſuſpected perſon; or to have connived, in any reſpect, at his malpractices. The police darogahs are directed to keep a regiſter of the village watchmen in their reſpective juriſdictions; and upon the death or removal of any of them, the landholders, or others, to whom it may belong to fill up the vacancies, are to communicate to the darogah the names of the perſons appointed, for the purpoſe of being regiſtered by him. For the more complete formation of this regiſter, and to enable the zillah and city magiſtrates, at all times, to aſcertain what number and deſcription of watchmen and guards are maintained in aid of the police, it is further required that every landholder, farmer, merchant, or other perſon, employing pykes, chokeedars, paſbans, nigabans, burkundazes, or any other deſcription of watchmen, or guards, ſhall, in the firſt month of every Bengal, Fuſſily, or Willaity year, (according to the æra current in the diſtrict) tranſmit to the magiſtrate a liſt made up to the laſt day of the preceding year; ſpecifying the names, occupations, places of

re-enacted for Benares, by R. XVII, 1795, § XIII, XIV; and for the ceded provinces, by R. XXXV, 1803, § XIII, XIV.

General rule, for all the provinces, declaring village watchmen ſubject to orders of the police darogahs. And preſcribing duties to be performed by them.

Penalty for diſobedience.

Regiſter to be kept of ſuch watchmen.

R. XII, 1807, § XXI.

Annual liſts of watchmen employed by individuals to be furniſhed to the magiſtrate.

 reſidence,

residence, and allowances in land or money, of the persons so entertained by them. Any neglect to furnish such lists, (especially after being called upon by the magistrate) as well as any wilful omission to include in them persons actually employed as guards or watchmen, of whatever denomination, is declared liable to a fine to government not exceeding two hundred rupees; to be determined by the magistrate according to the situation of the party and circumstances of the case.

Penalty for neglect to furnish such lists; and for wilful omissions in them.

Establishment of officers under the immediate authority of the police darogahs.

The darogahs of the mofussil police jurisdictions, besides the aid of the watchmen above noticed, have under their immediate authority, a mohrir, or writer; one or more jemadars, who command detached parties, and occasionally act for the darogah, in his absence, or at subordinate stations; and an establishment of burkundazes, or matchlock-men, varying from ten to twenty, thirty, or forty, according to the extent, and population, or other local circumstances of the jurisdiction.* The general duty of the police darogah, and of the officers appointed to act under him, is to maintain the peace;† to prevent,

General duty of police darogahs and their subordinate officers.

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* Under instructions of the Nizamut Adawlut issued, with the sanction of government, on the 21st January 1808, the thanah and cutwalee burkundazes are ordered to be armed with a spear and matchlock; or with a sword and spear; as, in different situations, may appear most expedient. Besides the police establishments specified, guard boats are allowed in particular situations, where they appear necessary. Such boats are under the immediate direction of the magistrates; but by an order of government, passed on the 23d January 1806, have been placed under the control of the courts of circuit; and the magistrates are instructed to report to the latter, at each session, what services have been rendered by the boats employed under them respectively; that they may be discontinued, if useless; or transferred to another station where there may be occasion for them.

† In addition to the rules contained in Regulation XLIX, 1793, (extended to Benares by Regulation XIV, 1795, and re-enacted for the ceded provinces, with an additional section concerning the substance of the circular order mentioned below, by Regulation XXXII, 1803) for preventing affrays respecting disputed boundaries, lands, crops, and other property, (see page 84 of the first part of this Analysis) the magistrates were directed by a circular order from the Nizamut Adawlut under date the 25th October 1797, "to notify to the darogahs of police, under their respective jurisdictions, that they are to consider it their duty, as far as circumstances may admit, whenever they shall receive information of bodies of armed men being collected within

vent, as far as poſſible, the commiſſion of all criminal offences; to diſcover and apprehend the offenders, when ſuch are committed; to execute proceſs and obey orders tranſmitted by the magiſtrates; and to perform ſuch other ſervices as are preſcribed by the regulations. This duty is more particularly defined by the following rules, which have reference to the whole of the moſuſſil police juriſdictions, as now eſtabliſhed, under charge of darogahs, appointed on the part of government.

ANY perſon having a charge to prefer againſt another for murder, robbery, theft, or any other crime or miſdemeanor, and not chooſing to lodge it immediately before the zillah magiſtrate, is at liberty to preſer it, in writing, to the police darogah of the juriſdiction in which the crime or miſdemeanor may have been committed; or, if the offender ſhall have removed from thence, to the darogah of the juriſdiction in which he may be found. If the complaint be for abuſive language, calumny, inconſiderable aſſaults or affrays, or other petty offences which the magiſtrates are empowered to determine, without reference to the courts of circuit, it muſt be written upon ſtampt paper, bearing a duty of eight annas per roll, or ſheet;

R. XXII, 1793, § VII. B. R. XVII, 1795, § VII. C. P. R. XXXV, 1803, § VII. What charges may be preferred to the police darogah, inſtead of the zillah magiſtrate.

R. VII. 1800, § XXIII. C. P. R. XLIII, 1803, § XXIII. What complaints are required to be written upon ſtampt paper.

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within their reſpective police diviſions, for the purpoſe of either going to take, or retain, forcible poſſeſſion of diſputed land, or crops, to repair to the ſpot, and require them to diſperſe in a given time; on failure of which, to note down their names and places of abode, and to proceed to the reſidence of the zemindar, talookdar, or farmer, in whoſe ſervices they may be ſaid to be, and to require him inſtantly to cauſe them to diſperſe; declaring further, in the moſt public manner poſſible, the penalties the parties may be liable to, under the proviſions made in the ſeveral ſections of the aforeſaid regulation, or ſuch part of them as may be applicable to the caſe; and after taking theſe ſteps to ſet people to watch the further proceedings of the parties, and report the whole of the circumſtances, as they may occur, to the magiſtrate." The darogahs are further required by Section XIX, Regulation XXII, 1793, Section XVIII, B. Regulation XVII, 1795, and Section XIX, C. P. Regulation XXXV, " 1803, to proceed in perſon, or to depute one or more of their officers, as circumſtances may require, to the ſeveral towns, gunges, bazars, and hauts, on market days; to prevent any diſputes or diſturbances ariſing between the venders and purchaſers, or other perſons reſorting to the markets." And they are directed (in the Benares and Bareilly diviſions) " to obſerve ſimilar precautions on the occaſion of all melas, or aſſemblages of people for religious or other purpoſes.

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and a police officer receiving any ſuch complaint, not written upon the preſcribed ſtampt paper, is liable to diſmiſſion from his office. This proviſion, the object of which is to check litigious accuſations, of a trifling nature, does not include charges of more heinous offences. Upon a complaint being preferred, in writing, to a police darogah, or other police officer authorized to receive the ſame, againſt any perſon ſubject to his juriſdiction, "for any crime of a heinous nature, ſuch as murder, robbery, houſe-breaking, theft, ſetting fire to a village, houſe, or other building, or any crime involving a dangerous breach of the peace, ſuch as a violent affray, or aſſembling perſons to commit an affray, or any ſimilar offence, requiring the immediate apprehenſion of the offender; and on the complainant, or any other credible perſon or perſons, acquainted with the caſe, depoſing on oath (or under a ſolemn declaration) to the truth of the complaint; the darogah, or other police officer is, by a warrant under his official ſeal and ſignature, to cauſe the perſon accuſed to be apprehended; unleſs any ſpecial reaſon appear why the iſſue of proceſs for apprehending the party accuſed ſhall be ſtayed, until the charge be reported for the orders of the magiſtrate, in which caſe ſuch report is to be made without delay. If the offence charged be not bailable, or though bailable, if ſufficient bail be not tendered by the party accuſed on his apprehenſion, the darogah, or other police officer, is to ſend him in ſafe cuſtody to the magiſtrate, within twenty-four hours after apprehending him; or as ſoon afterwards as circumſtances may admit. If the offence charged be of a bailable nature, and ſufficient bail be tendered for appearance before the magiſtrate, the darogah, or other police officer, is required to accept ſuch bail; and immediately releaſe the party apprehended. Provided, that if it appear neceſſary to take ſecurity from the party apprehended, for keeping the peace, in addition to bail for his appearance, ſuch ſecurity may be required; but it is not to be demanded without manifeſt and urgent neceſſity." The forms of bail and ſecurity bonds,

R. IX. 1807, § XII. Police darogahs how to proceed upon charges requiring the apprehenſion of the accuſed.

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to be taken under theſe proviſions, as well as the form of warrants to be iſſued by a police officer, are preſcribed in Section XII, Regulation IX, 1807. If the complaint preferred to a police darogah, or other police officer authorized to receive the ſame, "be for any bailable crime or miſdemeanor which may not require the immediate apprehenſion of the accuſed, the police officer receiving ſuch complaint, upon the party complaining making oath (or a ſolemn declaration, as the caſe may be) to the truth of the complaint, or without ſuch oath (or declaration) if ſatisfactory reaſon be aſſigned by the complainant for not attending to make the ſame, and the truth of the charge be depoſed to by ſome other credible perſon or perſons, is to iſſue a ſummons under his official ſeal and ſignature, to be ſerved through a ſingle burkundaz, or peon; or through any known and accredited agent of the party complained againſt, who may be on the ſpot, and willing to receive the ſame in behalf of his principal; or in the mode directed by the rules in force for ſerving warrants on charges of bailable offences, againſt perſons employed in the ſalt department, or in the proviſion of the Company's inveſtment, if the perſon complained againſt be ſo employed. The ſummons is to ſpecify the offence charged; and if it be of a trivial nature, ſuch as abuſive language, a ſlight treſpaſs, or an inconſiderable aſſault, for which bail is is not demandable in the firſt inſtance, is merely to require the accuſed to attend, in perſon or by vakeel, and anſwer the charge, before the zillah or city magiſtrate, on a ſpecific date, to be fixed ſo as to afford the accuſed a reaſonable and ſufficient time for that purpoſe. If the charge be of a more ſerious nature, and ſuch as may appear to require bail, to ſecure the appearance of the party accuſed, either in perſon or by vakeel, before the magiſtrate, the ſummons is alſo to ſpecify the bail to be given; which, in no caſe, is to exceed what may be ſufficient to prevent the party's

R. IX, 1807, § XIII. What proceſs to be iſſued if the complaint be for any bailable offence.

abſconding, before the caſe ſhall come before the magiſtrate." The forms of ſummonſes, to be iſſued under theſe proviſions, are preſcribed by Section XIII. Regulation IX, 1807; and are the ſame as thoſe ordered to be obſerved by the magiſtrates. The rules already ſtated for the ſervice of ſummonſes iſſued by the magiſtrates, and for the receipt of acknowledgments or razeenamahs, are alſo declared equally applicable to the ſervice of ſummonſes iſſued by the police officers; and to the receipt of acknowledgments or razeenamahs by them. But with a view to guard againſt the recurrence of experienced abuſes, it is provided that no ſummons or other proceſs ſhall be iſſued by any police officer, without ſpecial inſtructions from the magiſtrate, on any charge of adultery, fornication, calumny, or other offence, not involving a breach of the peace. In ſuch caſes the police darogah, or other police officer receiving the complaint, is merely to take the oath (or ſolemn declaration) of the complainant thereto, and to tranſmit the ſame to the magiſtrate for his orders. Section XV, Regulation IX, 1807, preſcribes forms of recognizances to be taken by the police officers from proſecutors and witneſſes, binding them to appear before the magiſtrate on a ſpecific day, under penalty of paying ſuch fine to government, as the magiſtrate may judge it proper to impoſe on their non-attendance; beſides being ſubject to the charge of any proceſs which may be conſequently iſſued by the magiſtrate to compel their appearance.

R. IX, 1807, § XIV. Rules ſtated for ſervice of ſummonſes iſſued by magiſtrates, and for receipt of acknowledgments and razeenamahs, applicable to ſervice of ſummonſes iſſued by police officers; and to receipt of acknowledgments and razeenamahs by them. Proviſo, with reſpect to charges of adultery, fornication, calumny, or other offence not involving a breach of the peace.

R. IX, 1807, § XV. Recognizances to be taken from proſecutors and witneſſes.

When any perſon is apprehended, and brought before a police darogah, or other police officer authorized to iſſue a warrant of apprehenſion, upon a charge of murder, robbery, or other heinous crime, an examination of the priſoner, without oath, is to be taken, in the preſence of three or more creditable witneſſes (who are to atteſt the examination) and in the event of his making a free and voluntary confeſſion, he is to be queſtioned fully on the whole of the circumſtances of the

R. IX, 1807, § XVII. Inquiry to be made by police officers, on apprehenſion of perſons charged with any heinous offence.

the caſe; the perſons concerned in the commiſſion of the crime; and if any property have been ſtolen or plundered, the perſons in poſſeſſion of ſuch property; or the place where it has been depoſited. If any witneſſes to the fact, or perſons acquainted with the circumſtances of the caſe, be preſent, or on the ſpot, they are alſo to be queſtioned without oath, and the ſubſtance of any material information obtained from them is to be ſtated in a ſooruthal, or report, to be authenticated by the atteſtation of the perſons examined, and tranſmitted to the magiſtrate, under the ſignature of the police officer by whom the inquiry may have been made. But no compulſion is to be uſed, either againſt parties or witneſſes, for the purpoſe of obtaining the information ſpecified, or any other information whatever; neither ſhall a priſoner be perſuaded, or threatened, nor any promiſe or hope of pardon be held out to him, for the purpoſe of inducing him to confeſs; and it is declared that any ſpecies of maltreatment, to a priſoner or witneſs, by a police officer, or by any other perſon, will ſubject the offender to exemplary puniſhment, on conviction before the magiſtrate, or court of circuit. The police darogahs, and other officers of the police, are further prohibited, under penalty of immediate diſmiſſion from office, to detain any priſoners, without ſending them to the magiſtrate, beyond ſuch time as may be indiſpenſably requiſite for the preſcribed inquiry; and if from any cauſe ſuch inquiry cannot be completed within forty-eight hours, after the arrival of a priſoner at the cutchery or ſtation of the police officer, the priſoner is, notwithſtanding, to be ſent to the magiſtrate with a report of the caſe, for ſuch additional inquiry, or inſtructions, as the magiſtrate may judge neceſſary. The following rule has been preſcribed for police darogahs and other local police officers, in taking inqueſts. "*Firſt.* That whenever information is lodged of a perſon having died an unnatural death, they proceed to the ſpot on which the body has been found. *Second.* That they examine the body, to aſcertain whether there are any

Prohibition againſt compulſion, or any unfair proceedings, in making ſuch inquiries.

And no priſoner to be detained, without being ſent to the magiſtrate, beyond forty eight hours.

R. IV, 1797, § IX. C. P. R. XXXV, 1803, § XXV. Rule for inqueſts to be taken by police darogahs.

any marks of violence upon it, and if there are any wounds or bruiſes, to aſcertain the number of them, the length, breadth, and depth of each wound; with what weapons the wounds or hurts may appear to have been given; and the parts of the body on which they may have been received. *Third.* That they deſcribe particularly the place on which the dead body may be found, and whether the murdered perſon appears to have been killed on the ſpot, or to have been brought and laid there; and that they aſcertain particularly the name of the deceaſed perſon, if any perſon preſent ſhould recognize him. *Fourth.* That if the perſon murdered ſhall appear to be a ſtranger, and his name ſhall not be known, they are to endeavour to aſcertain where he was laſt ſeen, and where he ſlept the night before. *Fifth.* That the above inquiries be made in the preſence of creditable people of the neighbouring villages, and committed to writing; and that they require the perſons preſent to affix their names to the paper; which is likewiſe to be atteſted by their own ſignature, and that of the police mohurrir of the juriſdiction, and forwarded without delay to the magiſtrate*. " The police officers are further required to make it an invariable rule," whenever information is received by them of a recent robbery, or other violent crime, within

R. IX, 1807, § XVIII. Police officers how to proceed when information is received

* The following letter was circulated to the zillah and city magiſtrates, by order of the Nizamut Adawlut, on the 28th February 1799. " The Court of Nizamut Adawlut having obſerved, in ſeveral caſes brought before them by the courts of circuit, that perſons wounded have been carried by their friends to the police thanahs, and have died on the road, or ſoon after their arrival, in which caſes it may be preſumed that the removal of the wounded party has contributed to his death; the court deſire you will cauſe a public notice to be iſſued at each of your police thanahs, and alſo inſtruct your police officers to notify, as occaſion may offer, to the inhabitants, that in the event of any perſon being wounded by robbers, or others, in ſuch manner that he cannot be conveyed to the police darogah without hazard to his life, it is not neceſſary to remove ſuch perſon from the place where he can be beſt taken care of; but that notice ſhou'd be immediately given to the police darogah, who will either proceed himſelf to ſee the wounded party and make the neceſſary enquiry on the ſpot; or, if prevented from going perſonally, will depute a proper officer for this purpoſe. You are further to inſtruct your police darogahs to proceed themſelves, if poſſible, on all ſuch occaſions, immediately on receiving information of the occurrence, as they are required to do in all caſes of an unnatural death, by Section IX, of Regulation IV, 1797."

their

their reſpective juriſdictions, to repair in perſon to the ſpot, or to ſend a fit perſon from among the officers acting under them, to aſcertain the facts and circumſtances of the caſe; and procure all the information, which it may be practicable to obtain, for the diſcovery and apprehenſion of the offenders. The police officers, making ſuch local enquiry, are to be careful to aſcertain, and record, the day and hour when the fact was committed; the ſituation of the place; the names and deſcriptions of any perſons who may have been recognized as the perpetrators of the crime; by whom ſuch perſons have been ſeen and known; and the names and deſcriptions of any perſons ſuſpected of being concerned in the offence committed, with the grounds of ſuſpicion againſt them; alſo a full recital of the manner in which the crime has been effected; and in caſes of robbery, the articles of property ſtolen or plundered. This inquiry is to be made, and committed to writing, upon the ſpot; in the form of a ſoorut-hal or report, and in the preſence of three or more creditable people of the neighbourhood, by whom it is to be atteſted, and it is to be then forwarded without delay, for the information of the magiſtrate. It is further declared to be the duty of the police officers, on ſuch occaſions, to apprize the perſons preſent, that their ſuppreſſion or denial of any knowledge, which they may poſſeſs, relative to the perpetrators of the crime, will tend to invalidate their teſtimony, in the event of their depoſing to ſuch knowledge at a future period: at the ſame time, giving encouragement to all perſons, who may have been preſent at the commiſſion of a crime, to make a full communication of every fact and circumſtance within their knowledge, reſpecting the offenders; and taking their information or evidence, with ſuch precautions of ſecrecy as may appear requiſite, when perſons ſuppoſed to have recognized any of the offenders may appear to be deterred from publicly naming them, under fear of the conſequences, if the parties named ſhould not be apprehended.

of a recent robbery, or other violent crime, within their juriſdictions.

R. XXII, 1793, § XI.
R. R. XVII, 1795, § XI.
C. P. R. XXXV, 1803, § XI.
Police officers prohibited from making inquiries respecting truth of complaints, unless specially authorized.

R. IX, 1807, § XVI.
Also in all cases from passing sentence, imposing a fine, inflicting any punishment, or making any unauthorized exaction.

Likewise forbidden to discharge persons apprehended, except in cases authorized.

EXCEPTING cases in which the police officers are specially authorized to make inquiries, either by the regulations or by the orders of the magistrate, they are prohibited from inquiring into the truth of any complaint preferred to them; as well as, in all cases, from passing sentence upon any complaint; from imposing a fine; or inflicting any punishment; and from making any unauthorized exaction from the prosecutors, the accused, their respective witnesses, or any other persons whomsoever. They are likewise forbidden to discharge persons accused after having apprehended them, except in cases wherein they are authorized to accept bail or security, or to receive acknowledgments and razeenamahs.

R. XXII, 1793, § VIII, X.
R. R. XVII, 1795, § VIII, X.
C. P. R. XXXV, 1803, § VIII, X.
What persons may be apprehended by police daroghs without a written charge, and without issuing a warrant.

POLICE daroghs are authorized to apprehend without a written charge, and without issuing a dustuk or writ, persons found in the act of committing a breach of the peace, or against whom a general hue and cry shall have been raised. Also any notorious dekoits, or robbers, within their respective jurisdictions, of whom they may receive information; as well as all *Geedur mars*, *Malachees*, *Syrbejuahs*, or other descriptions of vagrants, or suspected persons, who may be lurking about their jurisdictions, without any ostensible means of subsistence; or who cannot give a satisfactory account of themselves. All persons so apprehended are to be sent, in safe custody, to the magistrate; who is directed to examine on oath, * such vagrants or suspected persons, as well as any other persons acquainted with their usual place of residence, occupation, or

Persons so apprehended to be sent to the magistrate, and what proceedings to be held by him.

* The oath of the party himself is of course to be taken only upon the circumstances mentioned, viz. his usual place of residence, occupation, and means of livelihood. If questioned upon any specific charge, or criminal offence, his examination must be taken without oath, in conformity with the general rule before cited, from Regulation IX, 1793, Section V, re-enacted for the ceded provinces by Section V, Regulation VI, 1803. In the latter, and conquered provinces, the police officers and village watchmen are directed by Section XV, Regulation XXXV, 1803, to be careful not to confound strangers coming from the adjacent districts or countries, for the purpose of cultivating land, or exercising their professions, with the vagrants and suspected persons whom they are authorized to apprehend.

mode

mode of obtaining their livelihood; and if there appear to him grounds for ſuppoſing that they are diſorderly or ill diſpoſed people, he may employ them in repairing the public roads, or upon any other public work, until they find ſecurity for their good behaviour in caſe of their being diſcharged; or until ſome creditable perſons ſhall agree to entertain them in their ſervice; or the magiſtrate ſhall be ſatisfied, from their deportment whilſt in his cuſtody, or other circumſtances, that they will of themſelves take to ſome ſervice or employment, ſo as to obtain an honeſt livelihood; in either of which caſes the magiſtrate is to diſcharge them. If any perſon ſo apprehended ſhall make his eſcape from the cuſtody of the magiſtrate before he is regularly diſcharged, and ſhall be reapprehended, he is to be impriſoned and kept to hard labour for ſix months. *

Penalty for eſcape of ſuch perſons from cuſtody of the magiſtrate.

POLICE darogahs are authorized to diſpatch letters by the public dawk, or where there is no dawk, by the heads of villages, not only to the other darogahs and magiſtrate of the zillah in which they are employed; but to the darogahs and magiſtrates of other zillahs, to whom they may have occaſion to ſend notice of any breaches of the peace. And they are directed, whenever they receive intelligence of any murder or robbery, the perpetrators of which may not have been apprehended, to diſpatch immediate information of it to all the neighbouring darogahs, as well as to the magiſtrates of the ad-

R. XXII, 1793, § XV. By what conveyance the police darogahs are to diſpatch letters.

Intelligence of murders and robberies to be communicated by them to neighbouring darogahs and magiſtrates.

* In conſequence of ſeveral inſtances of homicide, committed by perſons in a ſtate of inſanity, the magiſtrates were further directed by an order of the Nizamut Adawlut, iſſued with the ſanction of government, on the 6th January 1801, "to inſtruct the police darogahs under them to ſecure, and ſend to the ſudder ſtation of each diſtrict, all inſane perſons within the limits of their reſpective thanahs, from whoſe inſanity they may have reaſon to apprehend any fatal effects, unleſs their friends ſhall enter into engagements to take ſuch care of them as to prevent the poſſibility of their doing any miſchief; and to cauſe them to be confined in a ſeparate ward, with proper attendance, in the jails; charging in a contingent bill any extra expence incurred in conſequence." Inſane hoſpitals have ſince been eſtabliſhed at the ſtations of the ſeveral courts of circuit, for the reception and care of lunatics within each diviſion.

jacent

R. XXII, 1793, § XVI. B. R. XVII, 1795, § XV. C. P. R. XXXV, 1803, § XVI.
In what cases they are authorized to purſue perſons into other juriſdictions.
Aſſiſtance to be afforded to them in ſuch cases.

jacent zillahs * darogahs and other public officers are empowered to purſue perſons charged with crimes or miſdemeanors into other juriſdictions, whether of the ſame, or a different, zillah, provided the act charged ſhall have been committed within their own juriſdiction, or the offender was actually within it when the charge againſt him was preferred. In ſuch caſes the magiſtrates, police officers, landholders, farmers, village gomaſhtahs, cultivators, and all perſons having authority, or reſiding, within the juriſdiction, into which the offender is purſued, are required to afford every aſſiſtance in their power for his apprehenſion. But it is declared not lawful for any magiſtrate or darogah to iſſue a warrant for the apprehenſion of an offender reſiding, or being, in another zillah or juriſdiction, at the time of the complaint being preferred, for any crime or miſdemeanor not committed within the limits of their reſpective juriſdictions. † It is further directed that whenever the police officers apprehend perſons in any other juriſdiction than that of the magiſtrate under whom they are employed, they ſhall deliver to the darogah of the police juriſdiction, in which ſuch perſons are apprehended, a liſt of their names, and ſtatement of the crimes or miſdemeanors charged againſt them; which liſt and ſtatement are to be immediately forwarded by the darogah receiving the ſame to the magiſtrate whoſe authority he is ſubject to.

Reſtriction againſt warrants being iſſued by them, or by the magiſtrates, to apprehend perſons without their own juriſdiction.

R. XXII, 1793, § XVII. B. R. XVII, 1795, § XVI. C. P. R. XXXV, 1803, § XVII.
Liſt and ſtatement to be delivered, when perſons are apprehended by police officers, in the juriſdiction of a magiſtrate to whom they are not immediately ſubject.

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* This rule is confined to Bengal, Behar, and Oriſſa; and is not generally obſerved, with reſpect to communications to the magiſtrates of adjacent zillahs. It ſhould be univerſally enforced (and may be in the Bareilly and Benares diviſions without an expreſs regulation) as far as it regards immediate information of robberies to the darogahs of neighbouring juriſdictions, whether in the ſame zillah or not; that the ſpeedieſt and moſt effectual meaſures may be adopted to diſcover and apprehend the offenders.

† Except in caſes of actual purſuit, which do not admit of delay, it is uſual, and appears conſiſtent with the ſpirit of the regulations, when proceſſes are iſſued beyond the juriſdiction of the magiſtrate or police officer iſſuing them, to ſend them in the firſt inſtance to the magiſtrate or police officer of the juriſdiction in which they are to be executed, with a requeſt that he will order the enforcement of them.

DAROGAHS of the police are entitled to receive from government a reward of ten rupees for every dekoit, who may be apprehended by them, to be paid upon the conviction of the offender. * They are alſo entitled to a commiſſion of ten per cent on the value of all property, ſtolen or plundered, which they may recover; provided the thieves or robbers be apprehended and convicted. This commiſſion is to be paid by the owner of the property, after a fair valuation of it; or if he refuſe, or omit to pay it, the magiſtrate is authorized to diſpoſe, by public ſale, of ſuch portion of the property as may be ſufficient to make good the amount.

R. XXII, 1793. § XVIII.
B. R. XVII, 1795. § XVII.
C. P. R. XXXV, 1803, § XVIII.
B & C. P. R. XIV, 1807, § XIII.
Reward for apprehending dekoits payable to police officers.
And commiſſion on value of ſtolen, or plundered property, recovered by them.

THE following deſcriptions of boats, viz: *Lukhas*, from 40 to 90 cubits in length, and $2\frac{1}{2}$ to 4 cubits in breadth; *Jelkas*, from 30 to 70 cubits in length, and $3\frac{1}{2}$ to 5 in breadth, and Chandpoor paunſways of more than thirty oars, being particularly adapted to the uſe of dekoits, who infeſted the rivers in the lower parts of Bengal, the conſtruction and uſe of ſuch boats, without a ſpecial written licenſe from the magiſtrate, are prohibited by Section XX, Regulation XXII, 1793. The police darogahs are enjoined to ſeize all boats built, uſed, or transferred, in oppoſition to this rule; to apprehend, and ſend to the magiſtrate, the artificers employed in building, or repairing ſuch; and to report the name of the proprietor of the village in which they may have been built or repaired. The boats ſo ſeized are declared liable to confiſcation by the magiſtrate. The artificers employed in building or repairing them are puniſhable by the magiſtrate, by impriſonment not exceeding one month, or corporal puniſhment not exceeding twenty ſtrokes with a rattan. And the zemindar, or other landholder, allowing any boat, of the prohibited deſcriptions,

R. XXII, 1793. § XX.
Rules to prevent the conſtruction and uſe of particular deſcriptions of boats, in the lower provinces, without a license from the magiſtrate.

* In the rules for Benares and the ceded provinces the ſame reward is authorized for apprehending a thief, but it is provided by Section XIII, Regulation XIV, 1807, that the reward of ten rupees for apprehending a thief ſhall not be paid, except in caſes of magnitude, ſuch as may ſubject the offender to trial and conviction before the court of circuit.

to be built or repaired within the limits of his eſtate, without a licenſe under the ſeal and ſignature of the magiſtrate, forfeits to government the village in which ſuch boat may be proved to have been built or repaired.

R. XI, 1806. § IX. General prohibition to individuals, not in the public ſervice, againſt wearing a dreſs reſembling the uniform of the Company's ſepoys and laſcars or a badge of office.

THE police officers in general are further authorized and directed to apprehend and ſend to the magiſtrate of the zillah or city, in which they are employed, all perſons wearing a dreſs reſembling the uniform of the Company's ſepoys or laſcars; or a badge of office; in oppoſition to the rules contained in the following clauſes of Section IX, Regulation XI, 1806.

And rule for enforcement of ſuch prohibitions.

"ALL perſons, whether European or Native, within the Company's provinces (excepting ſuch privileged perſons as the government may ſpecially exempt from the operation of the rule contained in this ſection) are poſitively forbidden to dreſs any of their ſervants, either for the purpoſe of parade or of buſineſs, in the uniform of the Company's ſepoys and laſcars; or in a dreſs ſo nearly approaching to that uniform, as to enable the perſons wearing it to impoſe themſelves on the country people for ſepoys and laſcars. All natives, excepting thoſe actually in the military ſervice of the Company, or belonging to perſons ſpecially exempted by government from the operation of this rule, are forbidden to wear a dreſs ſimilar to that mentioned in the foregoing clauſe. Officers of every deſcription, employed in the ſervice of the Company, who are allowed eſtabliſhments of burkundazes, peons, and pykes, in their official capacity, or who may have occaſion to employ perſons of any of thoſe deſcriptions in ſuch capacity, are prohibited from clothing them with a military dreſs. Native officers and ſepoys, excepting ſubadars, jemadars, and ſerangs, even though in the ſervice of the Company, who may temporarily reſide or have occaſion to travel in the interior parts of the the country, unleſs

employed

employed on the public ſervice, are forbidden to wear their uniform coats. With the view of giving full effect to the orders contained in the preceding clauſes, the military commanding officers of ſtations, and of detachments, in the interior parts of the country, and the ſeveral zillah and city magiſtrates, are hereby authoriſed and required to deprive of a military dreſs any perſon who ſhall wear it contrary to theſe orders; unleſs it ſhall appear, that ſuch perſon is in the the military ſervice of the Company, in which caſe he ſhall be ſent to the corps to which he may belong, with a written complaint againſt him. No perſon ſhall be allowed to diſtinguiſh burkundauzes, peons, pykes, or other ſervants, with badges, except the public officers (civil or military) employed in the ſervice of the company, who are allowed eſtabliſhments of burkundazes, peons, or pykes. in their official capacity, or who may have occaſion to employ perſons of thoſe deſcriptions in the public ſervice. The ſeveral zillah and city magiſtrates are empowered and directed to apprehend any perſon (not being in the ſervice of a public officer of the government authorized to entertain ſuch ſervants) who ſhall wear a badge, in oppoſition to the prohibition contained in this clauſe, and to deprive him of the badge. Any European, not being a public officer of the government, to whom any of ſuch deſcriptions of public ſervants are allowed, employing badged peons, or other deſcriptions of ſervants wearing badges, contrary to this prohibition, will be liable to the ſevere diſpleaſure of government, on repreſentation of the circumſtances of the caſe by the magiſtrate, who is directed to report all ſuch inſtances. for the information and orders of the Governor General in Council,

THE only further ſpecial rule for the guidance of the police officers, which it appears requiſite to notice in this place, is contained in Section VIII, Regulation XI, 1806, to the following effect.

R. XI, 1806. § VIII. Aſſiſtance to be afforded by police officers to travelers, &c.

" WHENEVER

European and Native, passing through their respective jurisdictions, when the same may be required; and under what restrictions.

"WHENEVER any military officer, not commanding nor proceeding with a corps, or detachment of troops, or any other person, (whether European or native) not restricted by Goverment from passing through the Country, may be proceeding within any part of the Company's provinces either on the public service, or on his private affairs, and shall be in need of assistance, during his route, to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police, to aid him in providing any requisite bearers, coolies, boatmen, carts, or bullocks, or any necessary supplies of provisions, or other articles. On receiving an application of the above nature, the police officer, to whom it may be made, shall furnish the aid required, or cause it to be furnished by the proper person or persons; provided that a sufficient number of persons, who have been accustomed to act as bearers, coolies, or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture, and occasionally let for hire, can be procured within his jurisdiction. But all police officers are strictly forbidden, under pain of dismission from office, (under the rules prescribed by Regulation V, 1804,) on applications of the above nature, to compel any persons not accustomed to act as bearers, coolies, or boatmen, to serve on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts, kept for private use, and not for hire, or exclusively appropriated to the purposes of agriculture. Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first police station in the next zillah unless a voluntary engagement to the contrary may be entered into by such persons. The police officers are further enjoined to be careful that a proper compensation for the bearers, coolies, boatmen, carts or bullocks, employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto. For this purpose, the police officers are authorized

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to adjuſt the rate of hire to be paid for the bearers, coolies, boatmen, carts, or bullocks, required, and the price of any articles provided; as well as to demand, that the whole, or a part, according to the circumſtances of the caſe, be paid in advance. Should any traveller refuſe to comply with the adjuſtment or demand ſo made by a police officer, he will not be entitled to any aſſiſtance from the officers of Government under this Regulation."

THE whole of the police dorogahs are required to ſend to the magiſtrates a monthly report, in writing, containing the names of all perſons whom they may have apprehended, the date of their apprehenſion, the crime or miſdemeanor charged againſt them, the date on which they were diſpatched to the magiſtrate, or releaſed on bail, or diſcharged upon a razeenamah; and a circumſtantial detail of all other acts done by them in their official capacity. The original razeenamahs, in caſes wherin the darogahs are permitted to receive the ſame, viz. in complaints for petty offences (theſts excepted) on which the magiſtrates are empowered to paſs ſentence, are likewiſe to be tranſmitted with the monthly report, under the atteſtation of two creditable witneſſes. The report is to be diſpatched on the fifth of every month, for the month preceding, by the public dawk, or by ſuch other mode as the magiſtrate may direct. If it be proved that a darogah has apprehended any perſons, or iſſued orders, or done any official act, not inſerted and truly ſtated in his report, the magiſtrate is authorized to ſuſpend him, and he is liable to diſmiſſion from his office, by order of government, under the proviſions of Regulation V, 1804. * If the darogah of a police

R. XXII, 1793. §. XXI. B. R. XVII, 1795. §. XIX. C. P. R. XXXV, 1803, §. XX. Monthly report to be ſent to magiſtrates by police officers.

R. XXII, 1793. §. XII. B. R. XVIII, 1795. §. XII. C. P. R. XXXV, 1803, §. XII. Razeenamas received by police officers to accompany their monthly reports.

Penalty for omiſſions or falſe entries in the reports of police officers.

R. V, 1804. §. X.

jurisdiction,

* On the 2d February 1797, the magiſtrates were authorized by the Nizamut Adawlut "to remove the police darogahs from one ſtation to another, within their reſpective zillahs, whenever they may think it adviſable, from the darogah of any particular ſtation having acquired an undue local influence; or from conſideration of

R. XXII. 1793. S. XXII. R. R. XVII, 1795. S. XX. C. P. R. XXXV, 1803. S. XXI. R. IX, 1807. S. XIV, C. 2. Police officers liable to a criminal prosecution.

jurisdiction, or any officer under his authority, be guilty of corruption, extortion, or oppression, or commit any act repugnant to the regulations, he is declared liable to a criminal prosecution before the magistrate and court of circuit; or to a civil action, for damages, in the dewanny adawlut.*

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the greater activity of one darogah than another; or from any other consideration which, in their judgment, may render such occasional exchange of their police darogahs expedient." But the court having reason to believe that the discretion thus vested in the magistrates was too generally exercised, and the local knowledge obtained by a police officer, when not misused, being of material consequence in enabling him to perform, with effect, the duties of his station, the magistrates were instructed, by a second circular order, issued on the 11th July 1807, "to report, in future, to the Nizamut Adawlut, in an English letter, the grounds on which they may consider it expedient to remove any darogah from one station to another, for the information and previous orders of the court." The magistrates were further instructed on the 8th November 1806, to make occasional circuits of their districts, for the purpose of inspecting the police thanahs; applying for the sanction of the Nizamut Adawlut for their making such circuits, when the state of business depending before them, and in the civil courts, may admit of it.

* A doubt having arisen, from the terms of Section XXII, Regulation XXII, 1793, and Section XX, Regulation XVII, 1795, whether it was meant that criminal charges preferred, under those sections, against officers of police, should be received and proceeded upon, by the court of circuit, in the first instance; or whether they should be preferred to the magistrates, and the parties accused be committed or held to bail, by them, for trial, before the courts of circuit; the court of Nizamut Adawlut communicated to the several courts of circuit, by a circular letter, dated the 7th August 1804, their opinion that "it was meant by the regulations and sections in question to give an option, in the cases therein mentioned, either of a civil action in the dewanny adawlut, or of a criminal prosecution before the court of circuit; but that it was not intended by those sections to except any complaint, brought under them, from the regular course of procedure in other cases." The court further observed, that "this construction of the regulations referred to is confirmed by Section XXI, Regulation XXXV, 1803, for the ceded provinces." On a reference from Mr. C. Smith, officiating judge of the Patna court of circuit, to ascertain whether Section XXII, Regulation XXII, 1793, was meant to authorize the court of circuit to receive and try the charges therein referred to, when presented in the first instance to the judge of circuit, the court of Nizamut Adawlut, informed him (on the 4th April 1807,) that in the case of persons presenting complaints against police darogahs, to the court of circuit, the judge of that court should refer them to the magistrate, with directions to enquire into them; and on sufficient ground appearing, to commit or hold to bail the accused, for trial before the court of circuit. It was however subsequently notified to Mr. SMITH, that if the misconduct of a police officer came regularly before a court of circuit, in the proceedings upon a case under trial, the judge of circuit may take cognizance of it, and after calling upon the police officer for any requisite explanation, may

impose

The responsibility of the landholders and farmers in the province of Benares, and in the ceded and conquered provinces within the divisions of Bareilly and Benares, for robberies or thefts committed within their respective estates or farms, to which they were subject under the late tehseeldary system of police in those provinces, is expressly reserved, under the new system established by Regulation XIV, 1807. They are further declared responsible for the value of any stolen or plundered property proved to have been brought into their estates, or farms, with their knowledge or connivance; and which they may not have caused to be delivered up; or have given timely information respecting it to the local police officer, or the magistrate. All claims upon the landholders and farmers, for the value of such property, are to be instituted, tried, and decided, in the civil courts; subject to the general rules of appeal. The following provisions relative to landholders and farmers of land, in the divisions of Bareilly and Benares, are also still in force, under Regulation XIV, 1807; and are declared equally applicable to all officers of government, entrusted with, or employed in, the collection of the public revenues; or the rents of estates held khas, or under attachment; it being the duty of every public officer to render any assistance in his power for the support of the police, and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police.

tion, or civil action, for corruption, extortion, or oppression, or any act repugnant to the regulations.
R. XIV, 1807, § XIX.
Responsibility of landholders and farmers in the divisions of Bareilly and Benares for robberies or thefts committed within their respective estates or farms. And for stolen or plundered property brought into their estates, or farms, with their knowledge or connivance.

Claims in such cases, to be heard and determined by the civil courts.
R. XIV, 1807, § XX, XXI.
Penalties to which the landholders and farmers of land, in the Bareilly and Benares divisions, are liable, for not giving their assistance to the police officers, in maintaining the peace, and apprehending disturbers of it.
Applicable also to officers of government employed in the collection of the public revenue; or the rents of estates held khas; or under attachment.

First. "Landholders and farmers of land are required, with the assistance of their pykes, chokeedars, pausbauns, and other descriptions of village watchmen, to give at all times

B. R. II, 1797, § II, III.
C. P. R. XXXV, 1803, § III.
Extended, with addition, to

impose a fine upon him, or otherwise punish him, according to the nature of the case. It was further determined by the Nizamut Adawlut, on the 19th, August 1805, that a public prosecution may be ordered, against a police officer, for misconduct appearing to require exemplary punishment, when the party injured may not avail himself of the option to prosecute, given him by the regulations.

their

conquered provinces by K. VIII, 1805, § XIV, C. 8. Duties to be performed by landholders and farmers, with assistance of their village watchmen.

their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who may be found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend, or whom the police officers may require their aid to apprehend, in execution of the duties vested in them."

Penalty for wilful neglect in the performance of such duties.

C. P. R. VIII, 1805, § XIV, C. 8. As well as for being concerned, directly or indirectly, in any theft or robbery.

Secondly "ANY landholder or farmer of land, who may be convicted of wilful neglect in the instances above referred to, and particularly of neglect to afford his ready and utmost assistance on the requisition of a police officer, in apprehending persons within his estate or farm, who may have committed a breach of the peace; or who may be convicted of having been himself concerned, directly or indirectly, in any theft or robbery, committed within his estate or farm; or having been aiding or abetting therein, or privy to the same; is declared liable to the forfeiture of his estate or farm, or to such fine to government, as may be judged adequate to the circumstances of the case; and is to be proceeded against in the following manner."

Charges of wilful neglect, in the instances stated, how to be proceeded upon by the magistrate.

Thirdly. "THE charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate, in the mode prescribed by the regulations, with respect to other charges of a criminal nature; and after hearing the defence of the party accused, with the evidence adduced against him, or in his behalf, if the magistrate shall be of opinion that the charge is not established, he is to pass judgment of acquittal; with damages to the party, if the complaint shall appear to have been groundless and litigious. If the magistrate shall consider the charge established, he is to record his opinion to this effect; with the punishment he may judge adequate to the case, whether a fine (the amount of which is to be specified,)

ſpecified,) or a forfeiture of the offender's eſtate or farm (the annual jumma of which is to be in that caſe ſpecified,) and to tranſmit without delay a copy and tranſlation of his proceedings to the court of Nizamut Adawlut."

Rule for Nizamut Adawlut in ſuch caſes.

Fourthly. "THE Nizamut Adawlut, on receipt of the magiſtrate's proceedings, are to paſs ſuch order thereupon as they may think proper, on due conſideration of the evidence, and all the circumſtances of the caſe; and in all inſtances wherein they may order a fine to government, their judgment is to be conſidered final, and immediately carried into execution by the magiſtrate, in the ſame manner as other fines are levied under the exiſting regulations. But in caſe the Nizamut Adawlut ſhall adjudge a forfeiture of the offender's land or leaſe, they are, previous to ordering ſuch judgment to be carried into execution, to tranſmit their proceedings, with thoſe of the magiſtrate, to the Governor General in Council; who will finally determine whether the judgment of forfeiture ſhall be put in force, or commuted to a fine, or otherwiſe; and who, whenever he may order the land or leaſe of the offender to be forfeited to government, will at the ſame time cauſe the neceſſary inſtructions for the future diſpoſal of the land, to be conveyed to the collector, through the Board of Revenue."

And in what inſtances the judgment of that court to be reported to government.

R. XIV, 1807, § XVI. Landholders and tehſeeldars, in the Bareilly and Benares diviſions, may be ſtill employed as ameens of police under Regulation XII, 1807.

IT is further provided, by Regulation XIV, 1807, that nothing therein contained ſhall preclude the landholders or tehſeeldars, in the province of Benares, and in the ceded and conquered provinces within the diviſions of Bareilly and Benares, from receiving ſunnuds and being employed as ameens of police, under Regulation XII, 1807, hereafter mentioned. Alſo, that if, in any particular tehſeeldaries, eſtates, or farms, the Governor General in Council, on conſideration of local, or other circumſtances, ſhould judge it expedient to poſtpone the introduction of the general ſyſtem of police eſtabliſhed by

Section XVII. And general power reſerved to government to poſtpone, in particular inſtances, the introduction of the ſyſtem of

police eſtabliſhed by Regulation XIV, 1807; or to authorize any partial adoption of it; or any temporary arrangement which may appear expedient.

Regulation XIV, 1807; or any part thereof; or to grant the full powers of a moſuſſil police darogah to the tehſeeldar, landholder, or farmer; or to commit the charge of the police to any other perſon, as a temporary arrangement; the ſame may be directed by an order to the magiſtrate, communicated through the Nizamut Adawlut.

R. IX, 1806. Additional proviſions, for ſecuring the aſſiſtance of landholders, and farmers of land, of their under tenants and agents, and of the native officers of government, in apprehending proclaimed dekoits.

In a late regulation the following additional proviſions have been enacted for ſecuring the aid of the proprietors and farmers of land, in all the provinces, as well as of their under-tenants, and agents, and all native officers employed in the collection of the revenue or rent of land on the part of government, or the court of wards, in apprehending perſons charged with crimes of a heinous and public nature; particularly of proclaimed dekoits, ſuch as are deſcribed in this regulation. *

" It

* The object of this regulation, as declared in the title of it, is "the apprehenſion of perſons concerned in the offence of gang-robbery; and eſpecially the ſirdars or leaders of gangs of dekoits." To promote the attainment of this important object, it is ſtated, in the preamble, to have been deemed adviſable, on the one hand, to eſtabliſh perſonal ſecurity and indemnity, together with ſuitable rewards for ſuch perſons, as may afford active aſſiſtance in bringing offenders of the above deſcription to puniſhment; and, on the other, to preſcribe adequate pains and penalties, for ſuch perſons, as poſſeſſing the means of affording aſſiſtance towards the prevention of a crime ſo injurious to the peace and happineſs of ſociety, ſhall neglect to employ them to that end. The following ſections of this regulation, being connected with the ſubject of the preceding ſheets, which had been previouſly printed, they are here introduced in a ſupplementary note:—

§ II. "Whenever the magiſtrate of a zillah or city ſhall have certain information, that any perſon reſiding in or reſorting to any place or places within the limits of his juriſdiction, has been actually concerned in the commiſſion of the offence of dekoity or gang robbery, or that the notoriety of any ſuch perſon having been guilty of, or concerned in, the commiſſion of ſuch offences, is ſufficiently eſtabliſhed to render his apprehenſion eſſential to the peace and tranquillity of the diſtrict, and the magiſtrate ſhall be of opinion that the ordinary proceſs preſcribed for the apprehenſion of public offenders would be ineffectual, he ſhall report the circumſtances of the caſe to the Nizamut Adawlut, with his opinion and the grounds thereof; ſtating at the ſame time, the amount of the reward which he would recommend to be offered for the apprehenſion of the perſon in queſtion."

§ III.

Section XI. All perſons required to aſſiſt in the apprehenſion of public offenders, eſpecially of proclaimed dekoits.

" It being the duty of all claſſes of the community to aid in the apprehenſion of perſons charged with the commiſſion of public crimes and offences, all zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraje, all ſudder farmers and renters of land of every deſcription, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards,

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§ III. " On the receipt of the magiſtrate's report, the Nizamut Adawlut will determine whether the degree of notoriety and the dangerous character of the perſon accuſed, or the aggravated nature of the offence alleged againſt him, be ſuch as to warrant the meaſures herein preſcribed for his apprehenſion, and for his puniſhment in caſe of contumacy. In ſuch caſe, the Nizamut Adawlut is hereby empowered to authorize the offer of ſuch reward as they may deem adequate for the apprehenſion of the perſon accuſed, not exceeding however, in any one inſtance, the ſum of rupees five hundred, without the ſpecial authority of the Governor General in Council. The Nizamut Adawlut ſhall at the ſame time direct the magiſtrate to iſſue a proclamation, to be affixed at his own cutcherry, and at the ſeveral police thanahs within his juriſdiction, and to be publiſhed by beat of drum at the towns in which they are ſituated."

" Whereas ——— ſuppoſed to be an inhabitant of ———, about ——— years of age, (here deſcribe his perſon if it be known) by profeſſion a ——— (or as many of theſe particulars can be aſcertained) ſtands accuſed before the magiſtrate of ———, of (here ſpecify the offence.) It is therefore hereby proclaimed, by the ſpecial orders of the court of Nizamut Adawlut, that the ſaid ——— is required and commanded to appear before the magiſtrate at the cutcherry of this zillah (or city), to anſwer to the matter alleged againſt him, within the period of two months from the date hereof; in default of which, the ſaid ——— will be deemed guilty of the crime of which he ſtands accuſed, and will in conſequence be liable to be impriſoned and tranſported for life. It is alſo hereby proclaimed, that all perſons whoſoever are authorized and required to apprehend the ſaid ———, wherever he may be found: and any perſon or perſons who ſhall, under the authority hereby given, apprehend the ſaid ———, and ſhall deliver him in ſafe cuſtody, to the magiſtrate of this zillah (or city), or to any police darogah within the juriſdiction of this court, ſhall be entitled to receive the reward of rupees ——— from government. It is alſo hereby notified, that any perſon aiding or harbouring the ſaid ———, will be perſonally ſubject, on conviction, to fine, impriſonment, and confiſcation of property, under the proviſions of Regulation IX, 1808."

" Foujdarry Adawlut, the ——— 18 , correſponding with the (æra current in the zillah or city)."

Seal of the Court.

(Signature of the magiſtrate.)

§ IV.

wards, and generally, all perſons of whatever deſcription, are hereby required to afford every practicable aſſiſtance in the apprehenſion of ſuch offenders; particularly of the notorious criminals deſcribed in this regulation, both during the period ſpecified in the proclamation, and ſubſequently to that period, ſhould they ſtill have evaded the purſuit of juſtice. It is hereby at the ſame time declared, that if any perſon in his endeavours to apprehend a proclaimed offender for whoſe

Perſons wounding, or ſlaying, ſuch proclaimed offenders, when defending themſelves or flying, to be deemed guiltleſs.

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§ IV. "The magiſtrate ſhall tranſmit copies of the proclamation iſſued by him, under the foregoing ſection, to the magiſtrates of any of the adjacent zillahs or cities, in which he may conſider it probable that the proclaimed perſon may have concealed himſelf; that the ſame may be publiſhed throughout their reſpective juriſdictions."

§ V. "Should the perſon proclaimed, under this regulation, appear before the magiſtrate, or be apprehended within the period limited in the proclamation, the magiſtrate ſhall proceed againſt him as preſcribed by the regulations already in force."

§ VI. "If the proclaimed perſon ſhall appear, or be apprehended, at any period after the expiration of the time limited, he ſhall be proceeded againſt in the following manner."

§ VII. "The magiſtrate ſhall take ſuch evidence, and hold ſuch proceedings, as he may judge neceſſary, for the purpoſe of identifying the perſon of the priſoner; and having eſtabliſhed his identity, ſhall afford to the priſoner an opportunity of offering any plea which he may deem proper, why the ſentence ſpecified in the proclamation, directed in Section III, ſhould not be pronounced againſt him, without trial; recording the names of any witneſſes mentioned by the priſoner in ſupport of his allegations. The magiſtrate ſhall then commit the priſoner to jail, and ſhall cauſe the witneſſes named by him for the above purpoſe, as well as the perſons neceſſary to prove the identity of the priſoner, the due publication of the proclamation preſcribed by Section III, with the return made to it, and the time and manner of the priſoner's apprehenſion, to be in attendance, along with the priſoner, at the next enſuing ſeſſion of the court of circuit; and ſhall at the ſame time lay before the court the whole of his proceedings in the caſe."

§ VIII. "On the priſoner's being brought before the court of circuit at ſuch enſuing ſeſſion, the judge of the circuit, before whom it may be holden, ſhall again afford to the priſoner an opportunity of urging his reaſons why the ſentence preſcribed by this regulatoin ſhould not be pronounced againſt him without trial. The judge ſhall alſo examine the witneſſes who may be in attendance, under the directions contained in the preceding clauſe, and whoſe evidence may be deemed neceſſary to eſtabliſh the identity of the priſoner: the due publication of the proclamation, with the the return made to it; and the time and manner of the priſoner's apprehenſion. Should the judge be ſatisfied, from the proceedings held by him, that the priſoner has not incurred the penalties preſcribed by this regulation, he ſhall ſuſpend paſſing

any

whose apprehension a reward has been offered, should wound or slay him in consequence of standing on his defence or

any sentence on the prisoner. On the contrary, if the judge should be satisfied of the identity of the prisoner, and of his contumacy in not appearing before the magistrate within the prescribed period, he shall adjudge the prisoner to be imprisoned and transported for life; forwarding the whole of the proceedings, in either case, to the Nizamut Adawlut, who will pass such sentence or orders thereupon (in conformity with this regulation) as the circumstances of the case shall appear to warrant.

§ IX. "Nothing herein contained shall preclude the Nizamut Adawlut from mitigating the sentence passed on a prisoner under this regulation, whenever that court shall see sufficient ground for so doing.

§ X. "A conviction under the above provisions shall not exempt a prisoner so convicted, from being brought to trial on any specific charge of any other crime or offence, the nature of which may be such as to render him liable to an equal or greater punishment under the regulations. Whenever a charge of this nature shall be preferred against a prisoner so convicted, whether before or subsequently to his being apprehended, or shall arise from any proceeding held against him, and there shall appear to the magistrate sufficient grounds for so doing, he shall bring the prisoner to trial on such charge, before the court of circuit, under the established rule, as soon as may be practicable after the prisoner's surrender, or apprehension. The court of circuit or Nizamut Adawlut may also respectively direct, that the prisoner be brought to trial on any specific charge not being that for which he has been proclaimed, should either of these courts see grounds for doing so, from the proceedings before them."

§ XVI. "A separate register shall be kept by the magistrates of all sirdar dacoits or other persons proclaimed under the present regulation, according to the following form:—

Date of proclamation.	Name of the person proclaimed.	Date of apprehension, surrender, or ascertained death.	Sentence by the court of circuit.	Final sentence of the Nizamut Adawlut.	Date of final sentence.

§ XVII. "A copy of the foregoing register shall be transmitted, duly revised, on the 1st of each month, to the court of Nizamut Adawlut. A transcript of it shall likewise be at all times suspended in the cutcherry of the magistrate, in order that the public may be fully apprized of the names of proclaimed dacoits; whether the period limited in the proclamation for their surrender be past or yet unexpired."

flying, the perſon ſo wounding or ſlaying the criminal, ſhall be deemed entirely guiltleſs with reſpect to that act; in like manner as any perſon purſuing a robber or murderer immediately after the commiſſion of the crime, or reſiſting him during his attempt to perpetrate the offence, is held guiltleſs if he wound or ſlay the criminal in endeavouring to apprehend him."

Section XII. What perſons accountable for communication of intelligence to police darogahs and magiſtrates, reſpecting proclaimed dekoits.

"ALL zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraje, all ſudder farmers and under-renters of land of every deſcription, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards, are hereby declared (in addition to the reſponſibility attaching to them by the exiſting regulations with reſpect to robberies in general,) eſpecially accountable for the early and punctual communication to the magiſtrates and police darogahs, either publickly or ſecretly, as the informant may judge proper, of all intelligence which they may obtain reſpecting the reſort of any proclaimed dekoit to any place within the limits of the eſtate or farm, held or managed by them; and the magiſtrates are hereby ſtrictly enjoined not to divulge any ſecret information communicated to them on this ſubject, which may eventually affect the perſonal ſecurity of the informant."

Magiſtrates not to divulge ſuch information, in caſes requiring ſecrecy.

Section XIII. Penalty for neglect to give the information required by the preceding ſection.

"IF a magiſtrate ſhall have grounds to believe that any perſon, of the deſcription of thoſe ſpecified in the preceding ſection, ſhall have neglected to give due information to the magiſtrate or the police darogah, of the reſort of any proclaimed dekoit to any place within the limits of the eſtate or farm, held or managed by ſuch perſon, the magiſtrate ſhall call upon him to anſwer to the charge; and if it ſhall appear, upon a full and impartial enquiry, that the perſon accuſed has been actually guilty of the neglect aſcribed to him, the magiſtrate

giſtrate ſhall ſentence the offender to pay ſuch a fine to government, and to ſuffer impriſonment for ſuch a period of time, as he may deem proportioned to the offence; not exceeding however, the limitation preſcribed by Section XIX, Regulation IX, 1807, viz. impriſonment for ſix months, and a fine of rupees 200, commutable, if not paid, to impriſonment for a further period not exceeding ſix months longer."

Section XIV. Further penalty for harbouring, or aſſiſting, a proclaimed dacoit; or receiving money, or goods, from ſuch.

"If a magiſtrate ſhall have grounds to ſuſpect that any perſon, of the deſcription of thoſe mentioned in the preceding ſections, has afforded any actual aſſiſtance in harbouring a proclaimed dacoit, ſubſequently to the promulgation of the proclamation; that is, if ſuch perſon ſhall be ſuſpected of having afforded to the ſaid dacoit lodging, money, grain, or other ſupplies; or that he has committed any other overt act, tending to aid the offender in his depredations upon the community; or to evade the purſuits of juſtice; or that he has received any preſent or nuzzer, either in money or goods, from the ſaid offender; the magiſtrate ſhall call upon the perſon ſuſpected of having ſo offended for his reply; and if it ſhall appear, upon a full and impartial enquiry, that he has been actually guilty of the ſerious offence aſcribed to him, the magiſtrate, in addition to the puniſhment mentioned in the preceding ſection, ſhall adjudge the eſtate or farm, held by him (ſuppoſing him to be a ſudder zemindar, talookdar or farmer) forfeited to government. Provided, however, that previouſly to carrying the judgment of forfeiture into execution, the magiſtrate ſhall ſubmit his proceedings on the ſubject, to the court of the Nizamut Adawlut, who will confirm or annul the judgment ſo paſſed, according as they may be of opinion, that the charge has been duly eſtabliſhed or otherwiſe; provided, moreover, that in the event of their confirming the judgment, the Nizamut Adawlut ſhall report the caſe to the Governor General in Council; at the ſame time ſtating their opinion, whether the forfeiture ſhould be enforced or remitted, or commuted to a fine."

Magiſtrate how to proceed in ſuch caſes, and judgment to be paſſed, if the offender be a ſudder zemindar, talookdar, or farmer;

Subject to confirmation of court of Nizamut Adawlut.

"SHOULD

Section XV. When judgment to be given, if the offender be a fudder landholder, or farmer of land.

"SHOULD the perſon convicted of the offence mentioned in the preceding ſection, not be a proprietor or fudder farmer of land, the magiſtrate ſhall ſentence him, in addition to the puniſhment noticed in Section XIII, of this regulation, to ſuch further fine and impriſonment as he may deem proportioned to his offence; but previouſly to carrying ſuch further judgment into effect, the magiſtrate ſhall ſubmit his proceedings to the Nizamut Adawlut, who will finally confirm, amend, or reſcind the deciſion, as may appear to them to be juſt and proper. Should the perſon ſo offending be alſo an officer of government, the Nizamut Adawlut will at the ſame time take into their conſideration whether he ſhould not be diſmiſſed from his office: and if ſo, will adopt the neceſſary meaſures for that purpoſe under the proviſions of the general regulations."

Proviſion in caſe the offender be an officer of government.

R. XII, 1807. Extended to the diviſions of Benares and Bareilly, by Section XVI, R. XIV, 1807.

Reaſons for appointing ameens of police in the provinces of Bengal, Behar, and Oriſſa.

THE police eſtabliſhments maintained on the part of government in ſeveral diſtricts of Bengal, Behar, and Oriſſa, having been found inſufficient for the purpoſes of their appointment, and the reaſons which induced government to exonerate them from the general and excluſive charge of the police, not being applicable to the employment, in concert with the police darogahs, of ſuch of the landholders, farmers, and other inhabitants of credit and influence, as from their qualifications and character, may be conſidered deſerving of confidence and diſpoſed to make a proper uſe of the means which they poſſeſs, in promoting the maintenance of the peace, preventing the commiſſion of crimes, and apprehending offenders, it was deemed expedient that proviſion ſhould be made for granting commiſſions to reſpectable Hindoo and Moſulman inhabitants of the ſeveral zillahs; authorizing them to act as ameens of police, with certain ſpecified powers, and under ſuch reſtrictions as might guard againſt any abuſe of the authority entruſted to them. The following rules for this purpoſe were accordingly enacted by Regulation XII, 1807; and were extended

tended to the divisions of Benares and Bareilly by Section XVI, Regulation XIV, 1807.

Section II. To what persons, commissions, to act as ameens of police, may be granted.

"COMMISSIONS may be granted to respectable Hindoo and Mosulman inhabitants of the several zillahs, in the provinces of Bengal, Behar, and Orissa, authorizing them to act as ameens of police, with the powers, and under the restrictions, specified in this regulation."

Section III. By whom such ameens to be nominated and approved, and what report to be made of their qualifications.

"THE ameens of police shall be nominated by the zillah magistrates; and approved by the Governor General in Council. The magistrates are required, in every instance, to report to the Governor General in Council, through the court of Nizamut Adawlut, the information they may have obtained concerning the character and qualifications of the persons proposed by them for the trust."

Section IV. To what persons a preference is to be given in the selection of police ameens.

"IN the selection of persons to fill the office of police ameen, a preference shall be given to such as may be duly qualified, among the following descriptions; viz. proprietors of land, whether malgoozary or lakheraj, who have the management of their own estates; farmers of land holding their farms immediately from government; managers appointed by the court of wards for the estates of disqualified landholders; managers of joint estates on the part of the proprietors; tehseeldars or other officers collecting the rents of lands held khas, or the revenue from propietors or farmers of small estates; responsible under-renters and creditable agents of landholders, or farmers, having the management of an entire estate; or of any considerable portion of an estate; and in towns, bazars, hauts, gunges, or aurungs of sufficient extent to require a separate police ameen, any respectable inhabitant of such place, possessing property, and of acknowledged good character."

Section V. Further consi-

"THE appointment of ameen of police throughout every

deration to be attended to in proposing commiſſion for the truſt of police ameen.

part of the ſeveral zillahs not being conſidered indiſpenſably requiſite, and it being intended that this diſtinction ſhall be conferred upon ſuch perſons only as may be deſerving of confidence, and ſincerely diſpoſed to employ the means which they poſſeſs in promoting the maintenance of the peace, preventing the commiſſion of crimes, and apprehending offenders, the magiſtrates are enjoined to pay ſtrict attention to this conſideration, and intention, in propoſing commiſſions for the truſt of police ameen, under this regulation."

Section VI. For what period commiſſions to police ameens ſhall be conſidered in force.

"THE commiſſions of proprietors of land ſhall be in force no longer than they may have the management of their reſpective eſtates. The commiſſions of farmers, and under renters of land, ſhall expire with their leaſes; and thoſe of managers, tehſeeldars, or other public officers, or private agents, with the offices in virtue of which they may receive their commiſſions. Inhabitants of towns or other places, to whom commiſſions may be granted on account of their local reſidence, ſhall retain them only whilſt they continue to reſide in ſuch places. Provided with reſpect to the whole of the perſons ſpecified, on repreſentation fron the magiſtrates, of any ſpecial reaſon for extending the duration of commiſſions, beyond the time of their expiration under this ſection, ſuch extenſion may be granted, with the ſanction of the Governor General in Council, as ſhall appear expedient. The Governor General in Council alſo reſerves to himſelf the power of ordering, at any period, the revocation of a commiſſion for the office of police ameen, if the continuance of it appear unneceſſary or objectionable."

Section VII. What ſunnud to be granted, and by whom, to police ameens.

"WHEN the appointment of an ameen of police ſhall have been approved by the Governor General in Council, the zillah magiſtrate ſhall grant a ſunnud under his official ſeal and ſignature, in the Perſian language, and to the following effect." (The form of ſunnud ſtates the general duty of the ameen, as preſcribed by this regulation.)

"No

" No perſon receiving a ſunnud, under the preceding ſection, ſhall be removable from the office of police ameen, during the time for which the ſunnud is granted, without ſufficient cauſe eſtabliſhed to the ſatisfaction of the Governor General in Council. In all caſes wherein the magiſtrate may judge it expedient to withdraw a commiſſion granted under Section VII, before the expiration of it, he ſhall report the circumſtances of the caſe, with any proceedings held by him relative thereto, for the information and orders of government, through the court of Nizamut Adawlut."

Section VIII. Perſons receiving ſuch ſunnuds not to be removed whilſt they remain in force, without the ſanction of government.

Magiſtrate how to proceed, for withdrawing a commiſſion, before the expiration of it.

" All ſunnuds recalled, or expiring, ſhall be immediately delivered up to the zillah magiſtrate to be cancelled; and any perſon exerciſing the functions of a police ameen, without being duly authorized, ſhall, on proof to the ſatisfaction of the Nizamut Adawlut, be liable to ſuch fine and impriſonment as that court may deem it equitable to adjudge, on conſideration of the nature and circumſtances of the caſe. The magiſtrates are to report their proceedings, in all ſuch inſtances, to the Nizamut Adawlut, with their opinion reſpecting the amount of the fine, that ſhould be impoſed on the offender, according to the degree of his offence, and his ability to make good the penalty."

Section IX. Sunnuds recalled, or expiring, to be delivered up.

Penalty for acting as a police ameen without authority.

And magiſtrates how to proceed in ſuch caſes.

" Every ameen of police, previouſly to entering upon the execution of the duties of his office, ſhall ſubſcribe the following declaration before the zillah magiſtrate, or any perſon whom he may commiſſion to receive it:

Section X. Declaration to be ſubſcribed by police ameens, before they act.

" I ——— appointed ameen of police, ſolemnly declare, that I will execute the duties of that office, to the beſt of my abilities, with diligence, impartiality and integrity, according to the regulations enacted, or which may be hereafter enacted, for my guidance; that I will not, directly or indirectly, receive, or knowingly allow any other perſon to receive, any

fee,

ſee, reward, or emolument whatſoever, on account of any matter relating to the exerciſe of my functions as police ameen, and that I will, in all reſpects, faithfully diſcharge the truſt repoſed in me."

Section XI. Juriſdiction and authority of ameens of police.

"AMEENS of police, duly commiſſioned as directed, may exerciſe the authority with which they are inveſted, in concert with the police darogah, in all places ſituated within the limits of the eſtate, mehaul, town, or other local diviſion, for which they may be appointed; and the deſignation of which, with ſuch particulars as may be requiſite to define the limits of their juriſdiction, ſhall be ſpecified at the foot of the ſunnud granted to them. All perſons who may be reſident within ſuch limits, and who are ſubject to the juriſdiction of the zillah magiſtrate, are declared amenable to the authority of an ameen of police (in like manner as to the authority of a police darogah) as far as reſpects the regular execution of the duty committed to him. Ameens of police are alſo empowered to exerciſe a concurrent authority, within other police juriſdictions, when the perſon accuſed, at the time of the charge being preferred againſt him, may be within their juriſdiction, and may be purſued into another juriſdiction."

Section XII. C. 1. What charges may be received by a police ameen.

"AMEENS of police are authorized to receive charges againſt all perſons ſubject to their juriſdiction, for any crime of a heinous nature, ſuch as murder, robbery, houſe breaking, theft, ſetting fire to a village, houſe or other building; or any crime involving a dangerous breach of the peace, ſuch as a violent affray, or aſſembling perſons to commit an affray, or any ſimilar offence requiring the immediate apprehenſion of the offender."

Section XII. C. 2. In what caſes he may iſſue proceſs to apprehend.

UPON a complaint in writing being received by an ameen of police againſt any perſon or perſons ſubject to his juriſdiction for murder, robbery, or other crime of the nature above ſpecified,

cified, and on the complainant or any other creditable perſon, or perſons, acquainted with the caſe, depoſing on oath, or under a ſolemn obligation, to the truth of the complaint, the ameen of police ſhall iſſue a warrant, under his ſeal and ſignature, for the apprehenſion of the perſon or perſons complained againſt; unleſs any ſpecial reaſon appear why the iſſue of proceſs for apprehending the party accuſed ſhould be ſtayed; in which caſe the police ameen ſhall immediately tranſmit the charge, with information of the reaſon for ſtaying proceſs thereupon, to the police darogah of the juriſdiction; for the purpoſe of enabling him to proceed, as directed in Section XVII, Regulation IX, 1807."

Section XII, C. 3. Form of warrant to be iſſued, and to whom directed.

"THE warrant for apprehenſion, to be iſſued by a police ameen, ſhall be in the following form, and ſhall be directed to the officer by whom it is to be executed."—(Form omitted.)

Section XII, C. 4. Perſons apprehended, when to be conveyed to police darogah of the juriſdiction, and with what report.

"THE police ameen ſhall, within twenty-four hours, cauſe the perſon or perſons apprehended by him to be conveyed, in ſafe cuſtody, to the police darogah of the juriſdiction; and ſhall at the ſame time, tranſmit the original complaint preferred, with a report of the meaſures adopted in conſequence.

Section XII, C. 5. Police darogah how to proceed in ſuch caſes.

"THE police darogah, on receiving ſuch report, with the perſon or perſons apprehended, ſhall proceed in like manner as he is required to do with reſpect to perſons apprehended by his own warrant; and ſhall, in all caſes, tranſmit the report of the police ameen for the information of the zillah magiſtrate."

Section XIII. What perſons may be apprehended by a police ameen without a written charge or warrant.

"AMEENS of police, and all perſons acting under them, are authorized to apprehend, without a written charge, or warrant, and to convey in ſafe cuſtody to the police dorogah of the juriſdiction, any offender or offenders, who ſhall be found in the act of committing a crime, or flagrant breach

of the peace, of the nature ſpecified in the preceeding Section; or who ſhall be detected with ſtolen goods in their poſſeſſion; or againſt whom a general hue and cry ſhall have been raiſed; or for the apprehending of whom a proclamation ſhall have been publiſhed by the magiſtrate. In every other caſe, ameens of police are reſtricted from apprehending any perſon without a charge preferred againſt him, in writing, under the ſeal or ſignature of the complainant; and without a warrant under their own ſeal and ſignature."

Section XIV, C. 1. General duty of police ameens.

"It ſhall be the duty of ameens of police to afford every aſſiſtance in their power, in concert with the police dorogahs, and other officers of police, towards maintaining the peace of the country; preventing the commiſſion of heinous offences; and apprehending the offenders. They ſhall be careful to communicate to the police darogahs all intelligence which they may receive, in any way relating to the police of the country; eſpecially concerning robbers, vagrants, or perſons of ſuſpicious character, who may have concealed themſelves, or be lurking about, without any oſtenſible livelihood, in their reſpective juriſdictions; and ſhall require all perſons ſubordinate to them to be aſſiduous in obtaining ſuch information. It ſhall alſo be their particular duty to ſee that the pykes, paſbans, and other village watchmen, mentioned in Section XIII, Regulation XXII, 1793, perform the ſervices required from them by Section XIV, of that Regulation; that they patrol, at night, the towns and villages, to which they are attached, for the purpoſe of preventing robberies, thefts, and other crimes; or if ſuch be committed, that they uſe every endeavour to detect and ſeize the perpetrators."

And particular duty to ſee that the village watchmen perform the ſervices required from them.

Section XIV, C. 2. Police ameens how to proceed on information of any homicide, or unnatural death, or of any robbery or

"On information being received by an ameen of police of any recent homicide, or unnatural death, or of any robbery, or other violent crime, within his juriſdiction, he ſhall immediately communicate the ſame to the police darogah; who will

proceed

proceed to take an inqueſt as required by Section IX, Regulation IV, 1797; or to make the inquiry directed by Section XVIII, of Regulation IX, 1807. The ameen of police ſhall, at the ſame time, endeavour to procure any information which may be obtainable, tending to the detection of the perſons concerned in the perpetration of the crime; and if any circumſtances ſhould prevent an inqueſt being taken, or inquiry made, in due time, by the police darogah, and his immediate officers, as directed in the regulations above mentioned, the police ameen ſhall proceed to hold the inqueſt, or make the inquiry, in conformity thereto; and tranſmit his report to the police darogah for the purpoſe of being forwarded to the magiſtrate."

other violent crime, within their juriſdictions.

"POLICE ameens ſhall alſo give any requiſite aſſiſtance to the darogahs of police in making the inquiry directed by Section XVII, Regulation IX, 1807; and on apprehending a perſon charged with any of the criminal offences, of which they are authorized to take cognizance, if he ſhall admit the charge and make a free and voluntary confeſſion, they are empowered to take the ſame in the manner preſcribed by the regulation above mentioned; for the purpoſe of diſcovering and apprehending any other perſons concerned in the commiſſion of the crime, or in poſſeſſion of any property that may have been ſtolen or plundered. But no priſoner ſhall he detained in cuſtody for this or any other purpoſe by a police ameen beyond twenty-four hours, without the moſt urgent neceſſity; of which an explanation is to be given in the report ſent with the priſoner."

Section XIV, C. 3. To aſſiſt darogahs in making inquiry, directed by Section XVII, Regulation IX, 1807; and how to proceed when perſons apprehended by them make a free confeſſion.

"AMEENS of police ſhall not take cognizance, in any way whatever, of petty offences and miſdemeanors, ſuch as abuſive language, treſpaſſes of men or cattle, and inconſiderable aſſaults or affrays; or offences not involving a breach of the peace, as adultery, fornication, and calumny; unleſs the complaint for ſuch an offence be ſpecially referred to them by the magiſtrate."

Section XV. Police ameens reſtricted from taking cognizance of certain offences, unleſs the complaint be referred to them by the magiſtrate.

"WHENEVER

Section XVI. Provision for local inquiries, to be made by police ameens, under special orders from the magistrates.

"WHENEVER the zillah magistrate shall judge it expedient to direct an inquiry to be made by an ameen of police, relative to any complaint of a criminal nature, originating within, or contiguous to, the limits of his jurisdiction, it shall be competent to the magistrate to order the same, by a perwanah under his seal and signature; and the report made by such ameen shall, unless there be good reason for the contrary, have the same authority as the report of a darogah of police in similar cases. In making such inquiries, and generally in all points coming within the prescribed duty of a police ameen, which are not expressly provided for by this regulation, the ameens of police shall be guided by the rules in force for the guidance of the darogahs of police, as far as the same may be applicable. The declared penalties for resistance to process issued by the police darogahs shall also be considered equally applicable to an authorized process issued by an ameen of police."

By what rules police ameens to be guided in making such inquiries; and, generally in cases not expressly provided for.

Penalty for resistance to an authorized process, issued by an ameen of police.

Section XVII. Monthly report to be furnished by police ameens.

"AMEENS of police shall furnish the zillah magistrate with a monthly report of all persons apprehended by them, and sent to the police darogahs. Such reports shall contain the names of the persons apprehended, the crime charged against them, the date of their apprehension, and the date of their dispatch to the police darogah. The report shall be closed on the last day of each month, and shall be sent by the public dawk, or by such mode of conveyance as the magistrate may direct, on or before the fifth day of the succeeding month. The police ameens shall also furnish any other reports, or information, which may be required from them by the zillah magistrates."

And any other reports, or information, required by the magistrates.

Section XVIII. Police ameens, and persons acting under them, declared liable to a criminal prosecution, or civil action, for corruption, extortion, apprehension, or any unwarranted act of authority.

"IF an ameen of police, or any person acting under his authority, be guilty of corruption, extortion, or oppression, or commit any unwarranted act of authority, he shall be liable to prosecution, either criminally before the magistrate and court of circuit; or for damages in the Dewanny Adawlut. But no ameen of police shall be liable to be prosecuted for want of

form

form in his proceedings, or for an error in judgment. Nor ſhall any proceſs whatever be iſſued againſt an ameen of police, who may be charged with corruption, extortion, or oppreſſion, unleſs the magiſtrate, or judge, ſhall be previouſly ſatisfied, by ſufficient evidence, that there is ground to believe the charge well founded."

But not for want of form or error in judgment.

Reſtriction on iſſue of proceſs againſt them.

"ALL pykes, chokeedars, paſbans, doſauds, nigabans, and other deſcriptions of village watchmen, who by Section XIII, Regulation XXII, 1793, are declared ſubject to the orders of the police darogahs, are further hereby declared to be equally ſubject to the orders of ameens of police, within their reſpective juriſdictions, in all matters relating to the office of the latter. All perſons in the employment of ameens of police, whether as public or private ſervants, or who may be under their authority in any other capacity, are alſo required to obey all legal commands given by them, in the execution of their duty as officers of police."

Section XIX. C. 1. Village watchmen ſubject to orders of police ameens.

As well as all perſons publicly or privately employed under them.

"CONSIDERING the deſcriptions of perſons from whom the ameens of police are to be ſelected under this regulatipn, it is not expected that they will require any diſtinct eſtabliſhment of public officers, at the charge of government, to enable them to perform the duties required from them. But if ſuch eſtabliſhment appear, in any inſtance, to be indiſpenſably requiſite, the zillah magiſtrate will report it through the court of Nizamut Adawlut, for the conſideration of government."

Section XIX, C. 2. Report to be made by the magiſtrate if any eſtabliſhment of officers, at the charge of government, appear requiſite.

"THE proviſions in Section XVIII, Regulation XXII, 1793, for a reward of ten rupees, on account of every decoit apprehended by a police dorogah, and for a commiſſion of ten per cent on the value of all ſtolen or plundered property recovered by a police darogah, ſhall be conſidered equally applicable to decoits apprehended, and ſtolen or plundered property recovered, by a police ameen.

Section XX. Reward for apprehending a decoit, and commiſſion on ſtolen or plundered property recovered, to be paid to police ameens, as to police darogahs.

Regulation XVIII, 1805. Preamble. Special rules for the police of the jungle mehals.

THE police of the jungle mehals, already mentioned, which were formerly included in zillahs Beerbhoom, Burdwan, and Midnapore, but were formed into a diſtinct zillah under the proviſions of Regulation XVIII, 1805, having been ſucceſsfully entruſted to the zemindars, or managers of zemindaries, in thoſe mehals, either jointly with, or inſtead of, police darogahs on the part of Government, it was deemed proper to enact, in a regulation, the rules experimentally adopted in the firſt inſtance, with the ſanction of Government, for this local police; and to provide for the extenſion of them, in other diſtricts, as far as might be found adviſable. The prohibition to landholders from entertaining eſtabliſhments of police officers is accordingly declared by Section V, of the regulation above noticed, "not to extend to any diſtrict included in the juriſdiction of the magiſtrate of the jungle mehals, the police of which has been, or may be, committed to the zemindar, or to the manager of a zemindary, either with, or without the co-operation of police darogahs, appointed under the proviſions of Regulation XXII, 1793." It is further declared, "that the prohibition contained in Section II, Regulation XXII, 1793, ſhall not be deemed applicable to any landholder, or to any farmer or manager of land, whom the Governor General in Council may authorize to entertain an eſtabliſhment of police officers, whether in jungle mehals, or in any other mehal or diſtrict whatever.* The following are the rules preſcribed for zemindars and managers of zemindarries, entruſted with

With proviſion for extending them, at the diſcretion of government, to other mehals.

R. XVIII, 1805, § V. Such Mehals excepted from the prohibition to the landholders againſt keeping up police eſtabliſhments.

Rules preſcribed for zemindars and managers of zemin-

* By this proviſion, and by that before quoted from Section XVII, Regulation XIV, 1807, for the diviſions of Bareilly and Benares, the Governor General in Council can, in all inſtances, adapt the local police to any circumſtances, which may appear to require a ſpecial deviation from the general rules in force. And the magiſtrates of the above diviſions, in which the neceſſity or expediency of ſuch deviations may be chiefly expected, are directed by Section XVIII, Regulation XIV, 1807, "to report through the courts of circuit and Nizamut Adawlut, for the information of the Governor General in Council, any inſtances, within their reſpective juriſdictions, in which they may think it adviſable to adopt any ſpecial arrangement; ſtating fully the circumſtances which require it; and the particulars of the arrangement propoſed."

the

the charge of the police in the jungle mehals. And the Governor General in Council has reſerved to himſelf the power of extending them, in whole, or in part, to any other mehals, the police of which may be entruſted to a zemindar, or other landholder, or to a farmer, or manager of land.

darries, entruſted with charge of the police.

Firſt. "ZEMINDARS, entruſted with the police, ſhall receive ſunnuds from the magiſtrate, under the authority of the Governor General in Council, veſting them with the charge of the police in their reſpective zemindarries."

R. XVIII, 1805, § VII. Zemindars to receive ſunnuds from the magiſtrate.

Second. "THEY ſhall not be deprived of their ſunnuds except for miſconduct proved to the ſatisfaction of the Governor General in Council. Whenever the magiſtrate ſhall be of opinion that there is ground for removing a zemindar from the charge of the police, he ſhall report the ſame through the court of Nizamut Adawlut, for the final determination of Government, in the mode preſcribed with reſpect to the police darogahs, by Section X, Regulation V, 1804."

And not to be deprived of them, except for miſconduct.

Magiſtrate how to proceed in ſuch caſes.

Third. "THEY ſhall be required to maintain ſuch eſtabliſhments of pykes or other watchmen, for the maintenance of the police, within their reſpective zemindarries, as may be fixed by the magiſtrate, with the approbation of the Govenor General in Council.

What eſtabliſhment of watchmen to be maintained by the zemindars.

"*Fourth.* A LIST of the perſons ſo employed, with a ſtatement of the allowance in land, or money, received by them reſpectively, ſhall be furniſhed by each zemindar, and ſhall be depoſited in the office of the magiſtrate. On the death or removal of any of the perſons ſpecified in ſuch liſts, the zemindar ſhall fill up the vacancies, but ſhall immediately report the ſame to the magiſtrate.

Liſt of watchmen and ſtatement of their allowances to be furniſhed to the magiſtrates.

Vacancies how to be ſupplied.

"*Fifth.* THE pykes and other watchmen, and all perſons employed

Watchmen and other police

Officers ſubject to orders of the magiſtrate, and how puniſhable for miſconduct.

employed under the zemindar as police officers, ſhall be ſubject to the orders of the magiſtrate, and be puniſhable for neglect of duty or other miſconduct, either by fine or impriſonment or by removal from office, or otherwiſe, according to the nature of the offence, under the general regulations in force."

Village watchmen alſo ſubject to police darogahs where appointed.

"*Sixth.* In zemindarries where police darogahs may have been or may be appointed, under Regulation XXII, 1793, all village watchmen, of whatever deſcription, ſhall alſo be ſubject to the orders of the police darogah, as declared in Section XIII of that regulation; and the zemindar ſhall in all caſes, aid and ſupport the darogah in preſerving the peace, preventing the commiſſion of crimes, and appredending offenders."

And zemindars to ſupport the darogah in all caſes.

Zemindars to receive copies of regulations for conduct of police darogahs.

And to obſerve the ſame, as far as practicable.

"*Seventh.* The zemindars ſhall be furniſhed with copies of Regulation XXII, 1793, and any other regulations that may be enacted for the conduct of the police darogahs; and are required to obſerve the rules contained in them, as far as may be practicable, in the diſcharge of their duties as chief police officers."

To whom perſons apprehended by zemindars are to be ſent within twenty-four hours.

"*Eighth.* The zemindars ſhall ſend to the neareſt police darogah, or to the magiſtrate, or to the neareſt military detachment under the command of an officer acting in ſupport of the police, (whichever may be moſt convenient) all perſons charged with murder, robbery, or other heinous crime, within twenty four hours after the party may have been apprehended."

Recognizances to be taken from proſecutor and witneſſes.

"*Ninth.* The zemindars ſhall be careful to take ſecurity *(ſince altered to recognizances by Section XV, Regulation IX, 1807,)* from proſecutors and witneſſes to appear before the magiſtrate on a certain day, as required by Section IX, Regulation XXII, 1793."

"*Tenth.*

"*Tenth.* In complaints for petty aſſaults, or abuſive language, the zemindars may take razeenamahs, as the darogahs are empowered to do, by Section XII, Regulation XXII, 1793; provided the parties ſhall deliver ſuch razeenamahs within twenty-four hours after the accuſed may have appeared at the zemindar's cutcherry."

In what caſes razeenamahs may be taken.

"*Eleventh.* The zemindars are authorized and required to apprehend all choars, and other plunderers of whatever deſcription, within the limits of their own zemindarries, while committing a breach of the peace, or paſſing through their zemindarries after the commiſſion of ſuch an offence. They may alſo apprehend, without a written charge, all perſons found within their zemindarries, in the act of committing any heinous crime; or with ſtolen goods in their poſſeſſion; or againſt whom a general hue and cry ſhall have been raiſed; and alſo any notorious robbers, or thieves, or vagrants of ſuſpicious character, as deſcribed in Section X, Regulation XXII, 1793."

Zemindars required to apprehend choars, and other plunderers.

What other perſons may be apprehended without a written charge.

"*Twelfth.* No zemindar ſhall ſummon the ryots of another zemindar."

No zemindar to ſummon ryots of another.

"*Thirteenth.* The digwars, pykes, or other police officers of one zemindar, are not ſubject to the orders of another. But all being employed in the public ſervice, for the general protection of the country, and the ſecurity of the lives and property of its inhabitants, it is expected that whenever there may be occaſion for their co-operation, and eſpecially when they may be called upon by the magiſtrate, or by any public officer acting on the part of the magiſtrate, they will jointly uſe their utmoſt endeavours to purſue and apprehend choars, as well as all other plunderers and diſturbers of the peace."

Watchmen and other police officers of one zemindar not ſubject to orders of another. But general co-operation expected when requiſite.

Reſtrictions on ſending pykes, or other police officers, within the limits of other zemindars.

"*Fourteenth.* No zemindar ſhall ſend his pykes, or other police officers, within the limits of other zemindars, without receiving an expreſs application from the latter for the purpoſe; or without a ſpecial order from the magiſtrate, or from a public officer, duly authorized, acting for the magiſtrate. But whenever choars, or other plunderers, ſhall attempt to aſſemble in any zemindarry, or to paſs through it, for the purpoſe of plundering another zemindarry, or to return through it after committing depredations, the zemindar and his police officers ſhall uſe their utmoſt endeavours to apprehend the offenders while in his zemindarry. Should their number or force be ſuch as to require aſſiſtance for their apprehenſion, the zemindar ſhall ſend immediate information to the commanding officer of any military detachment ſtationed in the vicinity, or to the neareſt police ſtation; and alſo to the magiſtrate's cutcherry."

But every endeavour to be uſed for apprehending choars, or other plunderers, aſſembling in, or paſſing through, any zemindarry.

And information given, if aſſiſtance be required.

Penalties for connivance or wilful neglect, in the caſes ſtated.

"*Fifteenth.* ANY zemindar who may be convicted of having connived at the aſſemblage or paſſage of choars or other plunderers within the limits of his zemindarry, and of not attempting to apprehend them, or giving the information required in the preceding article; or who may, in any inſtance, be convicted of wilful neglect in affording the aſſiſtance incumbent upon him to apprehend plunderers and prevent depredation; will be liable to puniſhment by fine, or impriſonment; or in a heinous caſe by forfeiture of his land; according to the circumſtances of the caſe, and under the proviſions of the general regulations in force. The principal and other ſubordinate officers of zemindars, who may be convicted of any of the offences ſpecified, will alſo be liable to the ſame penalties.

Magiſtrate how to proceed in ſuch caſes.

"*Sixteenth.* WHEN the magiſtrate ſhall be of opinion, that an offence of the nature deſcribed in the preceding clauſe is eſtabliſhed, he ſhall record his judgment to that effect,

with

with the punishment he may consider adequate to the case; but previously to carrying the same into execution, shall transmit his proceedings to the court of Nizamut Adawlut, for the sentence of that court; and in cases of forfeiture, for the ultimate determination of the Governor General in Council, as provided in Clause Third, Section III, Regulation II, 1797."

In what cases zemindars further liable to a criminal prosecution.

"*Seventeenth.* ANY zemindars entrusted with the charge of the police, who shall appear to the magistrate to have been directly or indirectly concerned in the commission of robbery, either in, or out of, the limits of his own zemindarry, or to have aided or abetted robbers; or to have received any plundered property from them; will be liable, in common with all other landholders, in such cases, under Section III, Regulation XXII, 1793, to be prosecuted for the crime, before the court of circuit; and on conviction, in addition to the legal punishment, their lands are declared liable to confiscation, or to be sold for the purpose of making good the value of the property plundered, at the discretion of the Governor General in Council."

And, on conviction, to a confiscation, or sale, of their lands.

Responsibility of zemindars for property robbed, or stolen.

Eighteenth. "THE zemindars shall engage to be responsible for the amount of all property robbed, or stolen, within their respective estates; unless it shall clearly and satisfactorily appear that the robbery or theft, in which such property may have been taken, was not, in any respect, owing to their want of care to prevent it, or to a want of vigilance on the part of their police officers. Every zemindar entrusted with the charge of the police, shall, previously to receiving his summud, execute an engagement to the above effect; and on his refusal to make good the amount of any loss sustained by robbery or theft, committed within his zemindarry, may be sued by the party injured, in the civil court of the zillah, wherein the loss shall have been sustained, for recovery of the amount:

And engagement to be executed by them.

Under which they may be sued, for losses by robbery or theft, in civil court.

subject

ſubject to the general rules in force, for the trial, and deciſion of civil cauſes."

Information and monthly reports to be ſent to the magiſtrate.

"*Nineteenth.* THE zemindars ſhall tranſmit regular information to the magiſtrate of all occurrences relating to the police of their zemindarries, and ſhall alſo ſend the monthly reports directed in Section XXI, Regulation XXII, 1793; according to a form to be furniſhed to them by the magiſtrate for that purpoſe."

In what language and character ſuch communications to be made and orders iſſued by the magiſtrate.

"*Twentieth.* ALL reports, letters, and written information, ſhall be tranſmitted by the zemindars to the magiſtrate, and all orders and communications ſhall be iſſued by the magiſtrate to the zemindars, in the language and character, commonly uſed in their reſpective zemindarries."

Serberakars of diſqualified landholders may be entruſted with police.

And to receive ſunnuds, execute engagements, and perform duties, as zemindars.

With ſuch qualified reſponſibility as government may direct.

"*Twenty-firſt.* IN eſtates, the proprietors of which may be diſqualified from age, ſex, or other cauſe, the ſerberakar, or manager, is declared eligible for the charge of the police, with the ſanction of the Governor General in Council; and, if appointed to this truſt, ſhall receive a ſunnud, execute engagements, and perform all the duties above preſcribed for a zemindar entruſted with the police; under the ſtated proviſion and reſponſibility; or with ſuch qualification of the latter, as the Governor General in Council may, in any inſtance, ſpecially authorize and direct."

Special rules for the police of Cuttack, and of the three pergunnahs formerly dependant thereupon.

R. XIII, 1805. Preamble.

Syſtem of police in Cuttack, under the Marhatta governments.

SPECIAL rules have alſo been enacted for the police of zillah Cuttack and the purgunnahs of Putteſpore, Kummardichour, and Bograe, former dependencies of Cuttack, which are now included in zillah Midnapore. When this territory, ceded to the Eaſt India Company by the Rajah of Berar, in the year 1803, was under the Marhatta government, the maintenance of the peace was entruſted to certain ſirdar pykes, or head-watchmen, called *kandytes*, aided by inferior pykes under their

their orders, for whoſe ſupport lands were aſſigned. The general control of theſe watchmen was veſted in the zemindars, talookdars, and other landholders and farmers of land, within the limits of their reſpective eſtates and farms; excepting inſtances in which they were deprived of the charge of the police by the government; either from inability to perform the duties of it, or for miſconduct, or other cauſe, in which caſe the excluſive charge of the police was uſually given to the kandytes above mentioned. This ſyſtem of police having been found well calculated for the prevention of crimes, and for maintaining the general tranquillity of the country, the following rules were enacted by Regulation XIII, 1805, in modification of Section VI, Regulation IV, 1804, whereby the general ſyſtem of police eſtabliſhed in Bengal, Behar and Oriſſa, had been extended to Cuttack; with a proviſion, that the zemindars, farmers, and other holders of lands, ſhould continue to perform the ſame duties as heretofore, and ſubject to the ſame reſponſibility, for the prevention of robberies and other diſorders; and for the maintenance of peace and good order within their reſpective limits."

Reaſons for continuing it.

And rules enacted for that purpoſe.

R. IV, 1804, § VI. In modification of proviſion firſt made for introduction of ſyſtem of police, eſtabliſhed in Bengal, Behar and Oriſſa.

"*Firſt.* The following rules ſhall be obſerved in the appointment of darogahs for the maintenance of the police in the zillah of Cuttack, and in the above mentioned pergunnahs of Putteſpore, Kummardichour and Bograe."

R. XIII, 1805, § IV. Rules for appointment of police darogahs.

"*Second.* In caſes in which the zemindars, talookdars, and other landholders, have not been formally diveſted of the charge of the police within the limits of their reſpective eſtates, for miſconduct or any other reaſon, either by the late Mahratta government, or by the board of commiſſioners for the ſettlement of the affairs of Cuttack; ſuch zemindars, talookdars, and other landholders, ſhall continue, under the reſponſibility ſtated in Section VI, Regulation IV, 1804, in charge of the police, according to eſtabliſhed uſage within their reſpective

In what caſes the principal landholders to continue in charge of the police, and to be conſtituted darogahs.

eſtates; that is, the principal zemindars, talookdars, and other landholders, being proprietors of large eſtates, ſhall be conſtituted doragahs of police, within the limits of their reſpective poſſeſſions; and the inferior zemindars, talookdars, and other landholders, being proprietors of petty eſtates, ſhall be conſidered to be ſubordinate officers of police, ſubject to the above-mentioned reſponſibility, under the immediate authority of darogahs, who ſhall be ſelected and appointed for the maintenance of the police in eſtates or mehauls of the latter deſcription."

And inferior landholders to be conſidered ſubordinate officers of police, under authority of darogahs.

"*Third.* In caſes in which any of the zemindars, talookdars, and other landholders, have been diveſted of the charge of the police (as above noticed) within the limits of their reſpective eſtates; one, two, or more kandytes or ſirdar pykes, according to the extent of ſuch eſtates, ſhall, in conformity to eſtabliſhed uſage, be veſted with the immediate maintenance of the peace, the apprehenſion of public offenders, and other duties of that deſcription, within the limits of the ſaid eſtates; ſubject nevertheleſs to the control of darogahs, who ſhall be appointed for the ſuperintendence of the police and the general controul of the conduct of the ſaid kandytes, and all inferior officers of police, within the limits of the authority of the ſaid darogahs reſpectively."

In what caſes the kandytes, or ſirder pykes to have charge of the police.

Subject to the control of darogahs.

"*Fourth.* The darogahs who may be appointed under Clauſes Second and Third, of this Section, ſhall receive ſuch ſalaries as the Governor General in Council may think proper to fix for their ſupport, on a conſideration of the labor and reſponſibility of the offices held by them."

What ſalaries to be received by darogahs appointed under this ſection.

Section V. Lands aſſigned for maintenance of pykes to be continued.

"Certain lands having been aſſigned by the authority of the late government, for the maintenance of the ſaid ſirdar pykes, and inferior pykes under the control of ſuch ſirdars, for the ſupport of the general police of the country, thoſe lands ſhall be

be continued to the ſaid ſirdar and other pykes, for the purpoſes to which they have been hitherto appropriated. It is to be underſtood however, that all officers of that deſcription ſhal be conſidered ſubject to the authority of the darogahs of police, whether zemindars or others, within their reſpective limits; and ſhall be bound to conform to all legal orders, which may be iſſued to them by ſuch darogahs, conformably to the powers with which the darogahs may be inveſted. It is further to be underſtood, that any ſirdar or other pyke will be liable to be diſpoſſeſſed of his lands for any diſobedience of orders, neglect of duty, undue violence, or other miſconduct; provided, however, that whenever a magiſtrate ſhall be of opinion that any kandyte, or ſirdar pyke, ought to be diſmiſſed from his office, or whenever the place of ſuch officer ſhall become vacant from death, or any other cauſe, the magiſtrate ſhall report the circumſtances of the caſe to the Nizamut Adawlut, who will paſs ſuch orders on the ſubject, as ſhall appear to them to be proper, under the general powers veſted in them by Regulation V, 1804; provided likewiſe, that whenever any vacancy ſhall occur among the inferior pykes, either from diſmiſſal, death, or otherwiſe, the places of ſuch pykes ſhall be ſupplied by the ſirdar pyke, on declaring himſelf to the magiſtrate reſponſible for the conduct of the perſon recommended by him."

But all perſons holding ſuch land ſubject to authority of darogahs of police.

In what caſes the pykes are liable to be diſpoſſeſſed of their lands.

Magiſtrate how to proceed in ſuch caſes.

Vacancies among inferior pykes how to be ſupplied.

"IT ſhall be the duty of the darogahs of police, whether zemindars or others, under the guidance and inſtructions of the magiſtrate, to form a complete regiſter of the ſirdar and other pykes, within the limits of the authority of the ſaid darogahs reſpectively."

Section VI. Regiſter of pykes to be formed by police darogahs.

"IT ſhall further be the duty of the darogahs of police to aſcertain and fix, under the orders of the magiſtrate, the limits of the local authority of the kandytes or ſirdar pykes, and of the inferior officers of police, attached to the ſaid ſirdar; ſo that

Section VII. Limits of juriſdiction of ſirdar and inferior pykes to be fixed by darogahs, under orders from the magiſtrate.

every

every part of the province of Cuttack, whether conſiſting of lands paying revenue to government, or of lands exempt from the payment of revenue, may receive the protection of the ſubordinate officers of police, under the directions of the darogahs, and the general control of the magiſtrate."

Section VIII. Landholders and farmers of land, not conſtituted officers of police, to aſſiſt in preſerving the peace and apprehending offenders.

"NOTHING contained in this regulation ſhall be conſtrued to exempt the zemindars, talookdars, farmers, and other holders of land, although they be not formally conſtituted officers of police, from the duty of affording every aſſiſtance in the prevention of breaches of the peace, and in the apprehenſion of public offenders; who are immediately to be delivered into the cuſtody of the neareſt officers of police."

Section IX. Landholders ſuſpected of connivance at robbery, or other public offence, liable to a criminal proſecution.

"ANY zemindar, talookdar, or holder of land exempt from revenue, who may be ſuſpected of conniving at any robbery, or other public offence, will be liable to be proſecuted before the criminal courts of the country, and puniſhed on conviction, under the general laws and regulations of the country."

Section X. Collectors of Cuttack and Midnapore to form a regiſter of lands aſſigned for the ſupport of pykes.

"IT ſhall be the duty of the collectors of Cuttack and Midnapore to form a complete regiſter of the lands aſſigned for the ſupport of the ſirdar and other pykes, ſpecifying the quit rent payable to the zemindars, talookdars, and other landholders, (if according to eſtabliſhed uſage, the lands have been hitherto ſubject to the payment of ſuch quit rent) and to tranſmit a copy of the regiſter required to the board of revenue, to be depoſited among the records of that board."

And to tranſmit a copy to the board of revenue.

Section XI. Certain deſcriptions of village watchmen not included in foregoing rules.

"THE foregoing rules regarding the ſirdar and other pykes, and lands aſſigned for their ſupport, are not to be conſidered applicable to certain dooſauds, or village watchmen, entertained by the zemindars, talookdars, and other landholders, for the purpoſe of watching crops, guarding granaries, and other duties of that nature; which officers ſhall be left under the

But left under excluſive con-

excluſive

exclusive control of the zemindars, talookdars, and other landholders, as heretofore."

trol of the landholders, as heretofore.

"ALL laws and regulations for the maintenance of the police, and for the administation of justice in criminal cases, in the province of Bengal, which have been or shall be enacted, and which shall not be inconsistent with, or repugnant to, the provisions contained in this regulation, and likewise such of the rules contained in Regulation IV, 1804, as are not either specifically or virtually rescinded by the present regulation, shall have full force and effect in the zillah of Cuttack, and in the pergunnahs of Puttespore, Kummardichour, and Bograe, included in the zillah of Midnapore. Provided however, that no part of this regulation shall be construed, for the present, to extend to the estates of certain hill or jungle rajahs or zemindars, of which the following is a list:

Section XIII. How far the general laws and regulations for criminal justice and police in the province of Bengal, to have force in Cuttac, and three pergunnahs annexed to zillah Midnapore Also rules contained in R. IV. 1804.

But no part of this regulation to extend to certain hill Rajahs specified.

Killah Neelgery,
Ditto Bankey,
Ditto Joorinoo,
Ditto Nersingpore,
Ditto Augole,
Ditto Toalcherry,
Ditto Attgurh,
Ditto Kunjur.
Ditto Kindeapara,
Ditto Neahgurh,
Ditto Rampore,
Ditto Hindole,
Ditto Teegereah,
Ditto Burrumboh,
Ditto Deckenaul,
The territory of Mohurbunge. *

IT

* None of the regulations have been extended to the estates of the Hill Rajahs mentioned in this section. But an engngement to the following effect (recorded on the

 proceedings

Preamble to Regulation XXIII, 1793. Police tax eſtabliſhed on introduction of new ſyſtem at the end of 1792.

It remains only to be obſerved, that on the reſumption of the charge of the police from the landholders, in Bengal, Behar, and Oriſſa, and the appointment of police officers on the part of government, at the end of the year 1792, it was determined to provide for the expenſe of the new eſtabliſhment by a charge upon the merchants, traders, and ſhopkeepers, reſiding in the ſeveral cities, bazars and gunges. Regulation XXIII, 1793, "for raiſing an annual fund for defraying the expenſe of the police eſtabliſhments entertained under Regulation XXII, 1793," was accordingly enacted; and remained in force till the year 1797, when it was aboliſhed by Regulation VI, of that year, in conſideration of "difficulties experienced in determining what perſons were liable to be charged with the tax, and alſo in fixing the amount to be aſſeſſed on the towns,

R. VI. 1797. Preamble. Reaſons for aboliſhing this tax in 1797.

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proceedings of the Nizamut Adawlut, under date the 4th February 1807) has been entered into by them.

Art. 1. I will forever be faithful and obedient to the Honorable Eaſt India Company.

Art. 2. I will without fail pay to the Britiſh government at three inſtalments, as under written, the ſum of —— annually, being the amount of my tribute.

Art. 3. Should any inhabitant of the territories of the Britiſh government abſcond, and take refuge within the boundaries of my Rajgee, I will, on his being demanded, immediately ſeize and ſend him to the preſence.

Art. 4. Should any one of the Ryots of my Rajgee commit any crime within the territories of the Britiſh government, I will, on demand, ſeize ſuch delinquent and forward him to the preſence for examination; and if I ſhould have cauſe of complaint againſt a ryot of the Britiſh government, I will not take any authority upon myſelf to ſeize him, but will forward information to the preſence, and conform to ſuch orders as may be given.

Art. 5. Whenever any troops of the Honorable Company ſhall paſs through my territories, I will iſſue orders to my ryots to uſe their utmoſt endeavours to ſupply the ſaid troops with proviſions &c. at proper prices; and ſhould any one belonging to the Britiſh government, or ſhould any other perſon with merchandize having an order or paſſport from the ſaid government, paſs through my Rajgee, either by land or water, I will not on any grounds, or pretence whatever, moleſt or impede his progreſs. On the contrary, I will be cautious that his life and property ſhall receive no injury within my territories.

Art. 6. If at any time any Rajah or other perſon in the neighbourhood of my Rajgee be diſobedient or offer reſiſtance to the Britiſh government, I will, when called on, without heſitation, ſend my troops to join thoſe of the Britiſh government for the purpoſe of puniſhing and reducing to obedience the ſaid offender, and theſe troops, agreeably to the number preſent will receive the cuſtomary allowance of proviſions.

bazars

bazars and other places reſpectively; and the proportion to be paid by the ſeveral contributors reſiding or having commercial concerns therein;" in conſequence of which frauds and exactions had been committed by the aſſeſſors and native collectors, to the vexation of the contributors, as well as to the diminution of the produce of the tax. To provide for the deficiency in the public revenue occaſioned by the abolition of this tax, new fees on the inſtitution and trial of civil ſuits, and ſtamp duties on certain original deeds, and papers, or copies of them, as well as upon pleadings in the courts of judicature, and copies of papers furniſhed by them, or by the Board of Revenue, or collectors, euſtom-houſe rowannahs, and other papers ſpecified in Regulation VI, 1797, were eſtabliſhed by the proviſions of that regulation. The annual produce of ſuch fees and ſtamp duties however is not ſpecifically brought to account for the charges of police: nor is there at preſent any diſtinct police fund; unleſs it be the produce of lands formerly appropriated to the expenſe of police eſtabliſhments, and reſumed from the landholders, in conſequence of their being exonerated from the charge of the police; the revenue of which is ordered to be collected from them ſeparately, for defraying the expenſe of the police, in purſuance of the Fourth Clauſe of Section VIII, Regulation I, 1793.* A tax however has been impoſed upon the manufacture

Fees and duties eſtabliſhed to provide for the deficiency occaſioned by abolishing the police tax.

Annual produce of ſuch fees and duties not carried ſeparately to account as a police fund.

Produce of lands reſumed from the landholders on exonerating them from the charge of the police, the only diſtinct police fund now ſubſiſting.

Reg. I, 1793. §. VIII. c. 4.

Tax upon ſpirituous liquors and intoxicating drugs

* The revenue of the reſumed thanadaree lands is very inconſiderable. The amount in the paſt year of account, 1807-8, was ſicca rupees 64,423 only. But the neat produce of the ſtamp duties, in the ſame year, was ſicca rupees 5,73,298; and of the abkaree, or tax upon ſpirits and intoxicating drugs, ſicca rupees 14,91,082. The actual charge to government for the police officers to be entertained in the diviſions of Barreilly and Benares, under the new ſyſtem eſtabliſhed by Regulation XIV, 1807, cannot be accurately ſtated at preſent. But the annual expenſe of the police eſtabliſhments paid by government in the provinces of Bengal, Behar and Oriſſa, (excluſive of Cuttack) does not much exceed ſix lacks of rupees. This ſum may, at the firſt view, appear conſiderable: but the aggregate number of police officers maintained by it, including darogahs, jemadars and burkandazes, or other armed men, employed as ſtationary guards, or in boats, is leſs than ten thouſand; and this number cannot be deemed large, or ſufficient, for the protection of the lives and property of a population,

might however be considered a fund for the police, if any distinction of the public taxes on this account were necessary.

facture and sale of spirituous liquors, and intoxicating drugs; partly with a view to the public revenue arising therefrom; and partly to check the immediate use of such by enhancing the price to the consumer. The rules which have been enacted for these purposes, will be more properly stated in the third part of this Analysis; but it may be here remarked, that one declared object of them is "to give the magistrates a more immediate and efficient control over the conduct of the venders; and to render the tax as much as possible conducive to the general purposes of police." The produce of this tax therefore might fairly be considered as forming part of a fund for the charges of police, if it were requisite to make any distinction in the taxes levied by government, on this account. But as the maintenance of a good police, such as may prevent the commission of crimes, or promote the discovery and apprehension of criminals when they are committed, is of essential consequence to the safety and welfare of the people, as well as to the prosperity and improvement of the country; a provision for it, from the general contributions and taxes, appears to be, at least, as exigent as any other article of public expenditure; and consequently not to require a seperate fund or collection *

R. VI, 1800, § XIX.

But no such distinction appears requisite.

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population, computed to be at least twenty-four millions; or for the due execution of the duties of an efficient police, within an extent of country stated by RENNELL to comprize nearly 1,50,000 square miles.

* It cannot be doubted however that the people would readily pay the actual expense of an efficient local police, if means could be devised of assessing and levying it with certainly and equality, so that each person might be charged nearly in proportion to the benefit derived by him in the security of his property; and, by knowing the exact amount, might not be exposed to the undue exactions of the persons employed to make the collection. The court of Nizamut Adawlut have long had it in contemplation to propose to government a contribution of this discription, with a view to provide more efficient police establishments in particular districts where they are most required; but have been prevented by a consideration of the difficulties which attend the measure, under the known disposition of every native assessor and collector to abuse the trust committed to him, when it cannot be defined by clear and specific rules for his guidance.

SINCE

1808

Regulation X, 1808, for the appointment of a ſuperintendent of police.

Since the foregoing pages were written, a regulation has been paſſed for the appointment of a ſuperintendent of police. Under the general ſyſtem of police which has been ſtated, the zillah and city magiſtrates, with the perſons acting under them, had excluſive authority, in all matters of police, within their reſpective juriſdictions; except in particular caſes wherein a concurrent authority is ſpecially ſanctioned. But (as obſerved in the preamble to the regulation in queſtion,) it is conſiſtent with the practice of other governments, that judicious and well-concerted meaſures ſhould occaſionally be adopted from the capital, in addition to the local adminiſtration of the police, for the apprehenſion of public offenders; and for the maintenance of general order and tranquillity throughout the country. By concentrating information obtainable from different parts of the country, in a particular office at the preſidency, a ſucceſsful plan of operations may be deviſed and executed when the efforts of the local police officers would be unavailing. Information and meaſures conducive to the diſcovery and ſeizure of the gangs of decoits, which ſtill continue to infeſt many of the zillahs in the province of Bengal, may eſpecially be promoted by the appointment of a ſuperintendent of the police. A power, veſted in this officer, to act in concert with the zillah and city magiſtrates, or independently of them, as circumſtances ſhall direct, may alſo be uſefully employed in the detection and apprehenſion of perſons charged with or ſuſpected of other public offences; and to promote this object, it is expedient, that he ſhould be one of the juſtices of the peace for the preſidency. The following proviſions have accordingly been enacted for theſe purpoſes.

Preamble.

"In addition to the perſons holding the joint offices of juſtices of the peace for the city of Calcutta, and magiſtrates of the 24-Pergunnahs, but whoſe functions are, for the moſt part, confined to the city and its ſuburbs, a covenanted ſervent

Section II. A covenanted ſervant of the Company to be appointed juſtice of the peace for Calcutta, magiſtrate of

the 24 pergunnahs, and superintendent of police.

vant of the Company ſhall be appointed to the offices of juſtice of the peace for the city of Calcutta; magiſtrate of the 24 Pergunnahs; and ſuperintendent of police."

Section III. By what laws to be guided as juſtice of the peace.

"As juſtice of the peace, he will of courſe be guided by the laws in force for the execution of the duties of that office."

Section IV. Rule for performance of duties, as magiſtrate of the 24 pergunnahs.

"As magiſtrate of the 24-pergunnahs, he ſhall, with the aid of two aſſiſtants, perform the duties of that office, in conformity with the regulations in force for the guidance of the zillah magiſtrates."

Section V. Juriſdiction of ſuperintendent of police.

"In his capacity of ſuperintendent of police, he ſhall poſſeſs a concurrent juriſdiction with the ſeveral zillah and city magiſtrates in the diviſions of Calcutta, Dacca, and Moorſhedabad."

Section VI. Proceſs of ſuperintendent how to be iſſued.

Aid to be given by magiſtrates, and perſons acting under them.

And reſiſtance to ſuch proceſs how puniſhable.

"The ſuperintendent of police is empowered to execute his warrants and other proceſs, in the form preſcribed by the regulations, either by means of his own officers, or through the local authorities, as he may judge proper. The ſeveral zillah and city magiſtrates, and all perſons acting under them, are required to aid and ſupport the officers of the ſuperintendent of police, in the execution of any warrant or other proceſs iſſued by him, under his ſeal and ſignature; and reſiſtance to any proceſs ſo iſſued is hereby declared to be puniſhable, in like manner as provided by the regulations for reſiſtance to the proceſs of a zillah or city magiſtrate."

Section VII. With whom and in what manner ſuperintendent may correſpond, upon ſubjects connected with his duty. And what information and aſſiſtance to be fur-

"The ſuperintendent of police is authoriſed to correſpond, either publickly, or ſecretly, with the officers of government in every department, upon ſubjects connected with the diſcharge of the duty committed to him: and all public officers are directed to furniſh the ſuperintendent with any information

formation they may poſſeſs upon ſuch ſubjects; as well as generally to co-operate with him, and to afford every aſſiſtance in their power to enable him to accompliſh the objects of his appointment."

niſhed by all public officers.

"THE ſuperintendent of police ſhall communicate immediately with the Governor General in Council, through the Secretary in the Judicial Department, upon all matters connected with his office; and ſhall act under ſuch inſtructions as may, from time to time, be tranſmitted for his guidance by the order of government,"

Section VIII. Superintendent to communicate with, and act under inſtructions of, the Governor General in Council.

"THE ſuperintendent of police ſhall alſo be conſidered under the general authority of the court of Nizamut Adawlut, in all matters relative to the police; and upon any point not expreſsly provided for by the regulations, or by the orders of government, ſhall be guided by the inſtructions of that court."*

Section IX. To be alſo under authority of the Nizamut Adawlut in all matters of police. And in what caſes to be guided by inſtructions of that court.

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* The ſummary of the Mohummudan criminal law prefixed to the Second Part of this Analyſis, and the more diffuſe method adopted, in citing, at length, the regulations in force for the adminiſtration of criminal juſtice, and the police, have extended this part beyond what was firſt propoſed. But it is hoped that the work will not be the leſs uſeful, in conſequence, to thoſe for whom it is deſigned. The firſt and ſecond Parts, which relate to the Judicial Department, civil and criminal, having occupied nearly ſix hundred pages, will form a convenient volume. The third and fourth Parts, which have more immediate reference to the Revenue Department, and, as ſtated in the introduction, are meant to include all objects connected with the public revenue, or the tenures and rents of land, will probably form another Volume. But as indiſpenſable official duties reſtrict the preparation of it to the ſhort intervals of vacations of court, a conſiderable time muſt elapſe before it will be completed and printed.

SUPPLEMENT

TO

FIRST PART.

SECTION I.

SINCE the firſt part of this Analyſis was printed, the following rule (contained in Section XXXI, Regulation VIII, 1805, for the ceded and conquered provinces, and extended to the other provinces by Section XII, Regulation XI, 1806,) has been enacted for promulgating the regulations in the country languages.* "On receipt of tranſlations of the regulations in the country languages, the zillah and city judges and magiſtrates ſhall cauſe the ſame to be publicly read in their cutcherries; and ſhall require the native pleaders of their reſpective courts to take copies of the tranſlations of any regulations which relate, directly or indirectly, to the adminiſtration of civil juſtice. The judges ſhall alſo cauſe the copies, which

C. P. R. VIII, 1805, § XXXI. R. XI, 1806, § XII.
Rule for promulgating the regulations in the country languages.

* This rule being equally connected with the adminiſtration of criminal juſtice, and the police, as with civil juſtice, it has been already cited in a note to page 478. But it was omitted to mention that under the letter and ſpirit of Section XXIII, Regulation XXII, 1793, (re-enacted for Benares by Section XXI, Regulation XVII, 1795, and for the ceded provinces by Section XXII, Regulation XXXV, 1803,) the police darogahs, and other principal local officers of police, are to be furniſhed by the magiſtrates with Perſian and Hindooſtanee tranſlations of ſuch of the regulations as relate to the performance of their reſpective duties.

they are required to furniſh to the cauzies ſtationed in the ſeveral towns and pergunnahs within their reſpective juriſdictions, to be read and publiſhed, for general inforation, at the cutcherries of the native commiſſioners, empowered to act as munſiffs, and of the police darogahs, or tehſeeldars in charge of the police." A ſtrict obſervance of this rule will materially promote the important objects of the general legiſlative proviſions ſtated in the firſt ſection of this work; and cannot therefore be too ſtrongly recommended to the particular and conſtant attention of the ſeveral zillah and city magiſtrates, to whom the regulations are tranſmitted for promulgation. Under the proviſions of Regulation XLI, 1793, (extended to Benares, by Section IV, Regulation I, 1795, and re-enacted for the ceded provinces by Regulation I, 1803.) "the civil and criminal courts of juſtice are to be guided, in their proceedings and deciſions, by the regulations which may be framed and tranſmitted to them as therein directed." But unleſs the regulations, ſo tranſmitted, are publiſhed for general information, in a language known to the natives of the country, it is evident that they muſt, in many inſtances, if enforced, have the operation of retroſpective laws; to the obvious and ſerious injury of the parties concerned.

Importance of a ſtrict obſervance of this rule.

By Section IV, Regulation I, 1795, which extended to the province of Benares the rules contained in Regulation XLI, 1793, "for forming into a regular code all regulations that may be enacted for the internal government of the Britiſh territories in Bengal," that no doubt might be entertained what regulations, ſo enacted, are meant to extend to that province, or otherwiſe, it was declared "that no ſuch regulation ſhall be conſidered to extend, either wholly or in part, to the province of Benares, unleſs the title to the regulation, or the regulation itſelf, or ſome other regulation, ſhall declare the whole or part of it to extend to that province."

R. R. I, 1795, § IV. Rule for determining what regulations, enacted for the internal government of Bengal, are meant to be extended to the province of Benares.

vince.* The particular regulations which have been enacted for, or extended to, the province of Benares, ſince the introduction into that province, in the year 1795, of the ſyſtem of internal adminiſtration before adopted in the provinces of Bengal, Behar, and Oriſſa, have been already mentioned; but the proviſion above noticed was omitted. It is further provided by Section LXXXIX, Regulation XXII, 1795, that ſeveral rules detailed in the preceding ſection of that regulation, (paſſed from the year 1781, when the Britiſh Government firſt interfered in the interior adminiſtration of the province of Benares, till the abolition of the office of reſident at Benares in the year 1795.) "are to continue in force, with the exception of the whole, or any part, of ſuch rules as have been or ſhall be, either expreſsly repealed, or altered by, or may be inconſiſtent with, any proviſion or proviſions, in any regulation declared to extend to the province of Benares, and printed and publiſhed in the manner preſcribed in Regulation XLI, 1793."

R. XXII, 1795, § LXXXIX. Proviſion for continuing in force certain rules made for the internal adminiſtration of the province of Benares, before the introduction of the preſent ſyſtem, in 1795.

In a note to the firſt ſection of this Analyſis (page 18) it was obſerved, that the regulations for the adminiſtration of juſtice in criminal caſes, which had been enacted, conformably to the rules preſcribed in Regulation I, 1803, for the provinces ceded by the *Nuwáb Vizeer*, in November 1801, had, by Regulation IX, 1804, been extended to the territories ceded by the *Péſhwá*, and *Doulut Ráó Sendheea*, in December 1803; and that it had been determined by Government to extend the remaining regulations, enacted for the provinces ceded by the *Nuwáb Vizeer*, to thoſe ceded by the *Péſhwá* and *Doulut Ráó Sendheea*, with ſuch local modifications as might be found neceſſary. This determination was carried into effect by Regulation

C. P. R. IX, 1804. Regulations for adminiſtering criminal juſtice, in the provinces ceded by the *Nuwáb Vizeer*, extended to the provinces ceded by the *Péſhwá* and *Doulut Ráó Sendheea*.

C. P. R. VIII, 1805.

* This is of courſe done, when the preamble to a regulation declares it to be in force throughout the provinces, or territories, immediately dependent on, or ſubject to, the preſidency of Fort William, although the province of Benares, be not ſpecifically mentioned.

Further rule for general extension, to the provinces ceded by the *Peshwá* and *Doulut Ráó Séndheea*, of the laws and regulations eſtabliſhed for the internal government of the provinces ceded by the *Nawaub Vizier*.

VIII, 1805 "for extending to the conquered provinces, ſituated within the Doab and on the right bank of the river Jumna; and to the territory ceded to the Honorable the Eaſt India Company in Bundlecund by the Peiſhwah; ſuch of the laws and regulations, eſtabliſhed for the internal government of the provinces ceded by the Nawaub Vizier to the Honorable the Eaſt India Company, as have not been already extended to thoſe territories; and for reviſing and amending certain parts of the ſaid laws and regulations." But the city of Dehli, and the conquered territory ſituated on the right bank of the river Jumna, the revenues of which had been aſſigned to his Majeſty *Shah Aalum*, are by Section IV, of the above regulation, "declared not to be ſubject to any of the laws or regulations of the Britiſh Government, printed and publiſhed in the manner preſcribed in Regulation I, 1803."*

Exception, by Section IV, of the city of Dehli and adjacent territory; the revenues of which were aſſigned to the King *Shah Alum*

R. XII, 1806. The pergunnahs of Sonk, Sonſa, and Sahar, ſituated on the right bank of the river Jumna, and reſumed from the Rajah of Bhurtpore, in April 1805, annexed to zillah Agra.

The pergunnahs of Sonk, Sonſa, and Sahar, forming part of the territories ſituated on the right bank of the Jumna, which were ceded to the Eaſt India Company, by the treaty concluded with Doulut Ráó Séndheea, on the 30th December 1803, but were ſubſequently given up to the Rajah of Bhurtpore, having been ſince reſumed, and become finally annexed to the Company's territories, in purſuance of a treaty concluded with the Rajah of Bhurtpore, under date the 17th April 1805, the above pergunnahs were, by Regulation XII, 1806, annexed to the juriſdiction of the zillah of Agra; and the regulations in force for the ceded and conquered provinces ſituated within the Doab, and on the right bank of the river Jumna, were ex-

And proviſion made for extending to them the regulations in force for the conquered and conquered provinces.

* This was before generally mentioned in a note to page 193. The aſſigned territory was originally denominated zillah Paniput, in Section III, Regulation IX, 1804. But that zillah was, of courſe, diſcontinued, under the proviſion made by Section IV, Regulation VIII, 1805. The late King *Shah Aalum*, died on the 19th November 1806; and was ſucceeded by his eldeſt ſurviving ſon, *Mirza Akber Shah*, who aſcended the muſnud on the ſame date, and aſſumed the title of *Akber-i Sánee*, the Second Akber.

tended

tended to the pergunnahs abovementioned, with provisions to limit their retrospective operation beyond the 17th of April 1805.

Bengal regulations for criminal justice extended to the district of Cuttack, by R. IV, 1804.

Regulation IV, 1804, "for the administration of justice in criminal cases in the zillah of Cuttack," has been already noticed.* By the provisions of that regulation, the rules in force for the administration of criminal justice in the provinces of Bengal and Behar, and in the part of the province of Orissa before subject to the British dominion, were made applicable (with certain modifications) to offences committed in the district of Cuttack, after its surrender to the British arms on the 14th October 1803; and it was declared by Section V, that "the Regulations hereafter enacted in the manner prescribed in Regulation XLI, 1793, for the administration of justice in criminal cases, and for the guidance of the magistrates, in the provinces of Bengal and Behar, and in the part of the province of Orissa heretofore subject to the dominion of the British government, shall be considered to extend to the zillah of Cuttack, unless it shall be otherwise specially directed in any regulation so enacted." Section XIII, Regulation XIII, 1805, contains a further provision for extending the laws and regulations in force, for the maintenance of the police and for the administration of justice in criminal cases, in the province of Bengal, to the zillah of Cuttack, and to the pergunnahs of Putteespore, Kummardichour, and Bograe, included in the zillah of Midnapore; with an exception to the estates of certain hill Rajahs, of whom a list has been already given.† By Section XI, Regulation XIV, 1805,* "for the administration of justice in civil cases in the zillah of Cuttack," it is also declared that "the laws and regulations which now are, or which may be hereafter, established in the provinces of Bengal, and Behar, and in that part of Orissa

Further provision for the same purpose, in Section XIII, R. XIII, 1805, including three pergunnahs, annexed to zillah Midnapore.

R. XIV, 1805, s. XI. Rule for extending laws and regulations relative to civil justice, and all matters cognizable by the civil courts, to Cuttack, and

* In Note to Page 18 and in Page 423.

* Vide page 573 and Note.

heretofore

In pergunnahs Putteſpore, Kummardichour, and Bograe.

heretofore ſubject to the Britiſh Government, for the guidance of the zillah judges, of the judges of the provincial courts of appeal, and of the Sudder Dewanny Adawlut, for the adminiſtration of juſtice in civil caſes, including the regulations for the manufacture of ſalt, for the proviſion of the inveſtment, and generally, regarding all caſes and matters ſubject to the cognizance of the courts of civil judicature in the ſaid provinces, which are not already extended to the zillah of Cuttack, and which are not repugnant to, or inconſiſtent with, any of the proviſions ſtated, or with any of the proviſions contained in Regulations XII and XIII, 1805, are to be in force in that zillah, and in the pergunnahs of Putteſpore, Kummardichour and Bograe; provided, however, that nothing herein contained ſhall be conſtrued for the preſent to be applicable to the eſtates of certain hill or jungle Rajahs or zemindars, of whom a liſt is inſerted in Section XXXVI, Regulation XII, 1805; and provided likewiſe, that in caſes in which the Bengal language and character are directed to be uſed in the province of Bengal; the Oryah language and character ſhall be uſed in the zillah of Cuttack, and in the abovementioned pergunnahs." The ſpecial proviſions referred to in this ſection, which have reference to the adminiſtration of civil juſtice in the zillah of Cuttack, and in the three pergunnahs annexed to zillah Midnapore, will be ſpecified in the ſequel of this ſupplement. Thoſe which relate to criminal juſtice and the police have been included in the ſecond part of this Analyſis. And ſuch as belong to the revenue department, being the proviſions of Regulation XII, 1805, "for the ſettlement and collection of the public revenue in the zillah of Cuttack" will be ſtated in the next diviſion of this work.

Eſtates of certain hill Rajahs excepted.

Oyrah language and character ſubſtituted for language and character of Bengal.

SECTION

SECTION II.

Alterations in the number of zillah and city courts already noticed.

THE alterations which have taken place in the number of zillah and city courts, ſince the firſt part of this Analyſis was printed, have been already ſtated.* It will be ſufficient to add, in this place, that the juriſdiction of the civil court re-eſtabliſhed in the vicinity of Calcutta, by Regulation VII, 1806, and denominated, as heretofore, the dewanny adawlut of the 24 pergunnahs, is declared, by Section III of that regulation, to "extend to the whole of the pergunnahs and mehals which are now, or may be hereafter, placed under the criminal and police juriſdiction of the magiſtrates of the 24 pergunnahs, and which are not ſituated within the limits of the town of Calcutta."

Provisions in Regulation VII, 1806, reſpecting the civil court in the 24 pergunnahs, re-eſtabliſhed by that regulation.

Section III. Limits of its juriſdiction.

It is further declared by Sections V, and VI, of the regulation abovementioned, that "the judge of the dewanny adawlut of the twenty-four pergunnahs, eſtabliſhed under this regulation, ſhall poſſeſs the ſame powers for the adminiſtration of civil juſtice, as are veſted by the general regulations in the judges of the other zillah dewanny adawluts; and ſhall perform the ſame duties; in the manner and under the reſtrictions preſcribed by the rules in force; or which may be hereafter enacted in conformity with Regulation XLI, 1793. The proviſions in Section II, Regulation IX, 1793, that the judges of the dewanny adawluts of the ſeveral zillahs ſhall hold the office of magiſtrate of the zillah under their reſpective juriſdictions, ſhall not however be conſidered applicable to the judge of the dewanny adawlut of the twenty-four pergunnahs eſtabliſhed under this regulation; nor ſhall he be authorized to exerciſe any powers, or to perform any duties, which, under the general regulations, appertain to the office of magiſtrate, and not to that of civil

Section V. Powers and duties of the judge.

Section VI. Not empowered to perform duties of magiſtrate.

* In Pages 425 and 426.

judge."

Section VIII. Complaints against collector of cuſtoms at Calcutta, and other public officers at the preſidency, which are cognizable by the civil courts, to be received and tried by judge of the 24 pergunnahs.

judge." Section XXVI, Regulation XI, 1800, whereby it was declared that, in conſequence of the abolition of the dewanny adawlut of the twenty-four pergunnahs, complaints againſt the collector of cuſtoms of Calcutta, or his officers, ſhould be cognizable in the dewanny adawlut of zillah Hooghly, is reſcinded by Section VIII, Regulation VII, 1806, in conſequence of the re-eſtabliſhment of a civil court in the twenty-four pergunnahs; and it is thereby declared "that all complaints againſt the collector of cuſtoms at Calcutta, or his public officers, or any other public officer at the preſidency, which by the regulations in force are cognizable in any court of zillah Dewanny Adawlut, ſhall be received, tried, and determined, as preſcribed in the regulations, by the judge of the dewanny Adawlut of the twenty-four pergunnahs, conſtituted in purſuance of the regulation now enacted."

Alteration in the juriſdiction of the zillah and city courts made by Regulation XIII, 1808.

A MATERIAL alteration in the juriſdiction of the zillah and city courts of dewanny adawlut has been recently made by Regulation XIII, 1808, "for rendering civil cauſes which are appealable to the court of Sudder Dewanny Adawlut cognizable in the firſt inſtance by the provincial courts, and for authorizing the execution of decrees appealed from in certain caſes." The reaſons for this alteration, and for amending the former rules whereby appellants might, in all caſes, ſtay the execution of decrees paſſed againſt them, are ſtated in the preamble to the above regulation in the following terms. "Under the rules in force, all cauſes of a civil nature, which may not be ſpecially referred by the Governor General in Council, or by the Sudder Dewanny Adawlut, for trial in the firſt inſtance by the provincial courts, are inſtituted in the zillah or city courts; excepting ſuits for perſonal property not exceeding fifty rupees, which may be received by the native commiſſioners veſted with the authority of munſifs. In all caſes tried by the zillah and city judges in the firſt inſtance, an appeal from their deciſions lies to the provincial courts; and if the

Preamble. Stating the reaſon for this alteration; and for other proviſions contained in Regulation XIII, 1808.

cauſe

cauſe of action exceed five thouſand ſicca rupees, a further appeal is open to the court of Sudder Dewanny Adawlut. In conſequence of the ſecond appeal allowed, in the caſes laſt mentioned, conſiderable delay frequently occurs in the final determination upon conteſted claims to large eſtates, and other valuable property. Much injury to the rightful owners is often occaſioned by ſuch delays; and the expenſe to all parties is increaſed, without any adequate benefit. The perſon againſt whom the judgment is given, whether by a zillah, city, or provincial court, is ſeldom willing to abide by it, whilſt he is at liberty to appeal from it. And the general option given to appellants by the exiſting regulations, to retain poſſeſſion of property adjudged, until a final decree be paſſed, under ſecurity for the performance of ſuch final deciſion, has been found to encourage litigious and groundleſs appeals, for the ſole purpoſe of keeping poſſeſſion of the property in diſpute, to the prejudice of the real proprietor. To provide againſt this abuſe, it is expedient that whenever the perſon, to whom land, houſes, or other immovable property may be adjudged, ſhall be able to give the preſcribed ſecurity for performing the judgment to be paſſed on an appeal, he ſhould obtain immediate poſſeſſion of the property adjudged to him, notwithſtanding the appeal; unleſs ſpecial cauſe appear, to the ſatisfaction of the court of appeal, for leaving the appellant in poſſeſſion, until the appeal be determined upon. And, for the reaſons above ſtated, it is adviſable that all cauſes, ultimately appealable to the Sudder Dewanny Adawlut, ſhould be made originally cognizable by the provincial courts. In addition to the advantage which the parties in ſuch cauſes will derive from this meaſure, it may be expected that it will promote the ſpeedy deciſion of other ſuits cognizable in the zillah and city courts, by relieving the judges of a part of their duty. At the ſame time it will be requiſite, as well for the convenience of witneſſes reſiding at a diſtance from the ſtations of the provincial courts, as to prevent too great an accumulation of buſineſs in

thoſe courts, that a diſcretionary power ſhould be veſted in them of cauſing the depoſitions of witneſſes to be taken in the zillah and city courts, or before the judge of the provincial court, who may proceed upon the half yearly circuit." The following rules have accordingly been enacted, for theſe purpoſes."

Rules enacted by Regulation XIII, 1808.

Section II. Part of exiſting regulations, veſting original juriſdiction in zillah and city courts, in regular civil cauſes, of amount or value exceeding 5000 rupees, reſcinded.

§ II. "SUCH part of the exiſting regulations as veſts original juriſdiction in the zillah and city courts of dewanny adawlut, for the inſtitution, trial, and deciſion, of regular civil ſuits, in which the cauſe of action may exceed five thouſand ſicca rupees, viz: for malgoozary land, the computed annual produce of which, as deſcribed in Section III, Regulation IV, 1793, and Section III, Regulation III, 1803, may exceed five thouſand ſicca rupees; or for lakheraj land, the computed annual produce of which may exceed five hundred ſicca rupees; or for a houſe, tank, garden, or any other deſcription of immovable property, the computed value of which may exceed five thouſand ſicca rupees; or for money, effects, or other movable property, exceeding in amount or value, the ſum of five thouſand ſicca rupees; is hereby reſcinded."

Section III. Such cauſes to be tried, in the firſt inſtance, by the provincial courts.

§ III. "*Firſt.* ALL regular civil ſuits, for an amount or value, exceeding five thouſand ſicca rupees, as ſpecified in the preceding ſection, ſhall be inſtituted, heard, and determined in the firſt inſtance, under the general rules applicable to the inſtitution, trial, and deciſion, of ſuch cauſes, in the provincial court of the diviſion, in which the land, houſe, or other immovable property ſued for may be ſituated; or, in other caſes, in the provincial court of the diviſion in which the cauſe of action may have ariſen; or the defendant may reſide as a fixed inhabitant, when the ſuit againſt him is commenced."

Petition of plaint, inſtitution fee, and ſecurities, to be

"*Second.* THE petition of plaint, with the inſtitution fee, and ſecurities required by the regulations, in ſuch caſes, are to be delivered

delivered to the provincial court; unleſs upon the repreſention of parties, in particular inſtances, that it will be more convenient to them to deliver the inſtitution fee, or requiſite ſecurity, to the court of the zillah in which they reſide, the provincial court ſhall think it proper to permit the ſame; in which caſe they ſhall cauſe notice of ſuch permiſſion to be iſſued to the zillah judge; and fix a period for compliance with it."

delivered into the provincial court.

Unleſs provincial court ſhall permit the ſame to be delivered in zillah court.

§ IV. "*Firſt.* If the plaintiff in a zillah or city court ſhall ſtate his cauſe of action as not exceeding five thouſand ſicca rupees, and the defendant ſhall, in anſwer, deny ſuch ſtatement, and allege the produce, amount, or value, to be ſuch as to render the ſuit not cognizable by the zillah or city court, under this regulation; the judge of that court, previouſly to entering upon any inveſtigation of the merits of the cauſe, ſhall make ſuch inquiry as may appear neceſſary to aſcertain whether the ſuit be, or be not receivable, in the zillah or city court; and ſhall paſs an order accordingly; leaving either party, who may be diſſatisfied therewith, to prefer a ſummary appeal therefrom, to the provincial court; whoſe deciſion ſhall be final upon the queſtion, whether the ſuit be cognizable, or not, in the zillah or city court. But no ſuch objection to the plaintiff's ſtatement of the cauſe of action ſhall be received from the defendant, unleſs offered, in the firſt inſtance, in anſwer to the plaint. Nor ſhall any appeal from the order of the zillah or city judge, in ſuch caſes, be open to the provincial court, unleſs preferred within one month, after the order appealed from is paſſed; or unleſs ſufficient reaſon be aſſigned, to the ſatisfaction of the provincial court, why it was not preferred within that period."

Section IV. Diſputes between parties reſpecting cauſes inſtituted in a zillah or city court, being cognizable or not by ſuch court, under this regulation, by whom and under what rules to be decided.

"*Second.* The petition of appeal from the order of a zillah or city judge, declaring a ſuit admiſſible, or not admiſſible, in a zillah or city court, may be preſented, at the option of the appellant, either to the court paſſing the order appealed from,

Petitions of appeal from an order paſſed on this ſubject, by a zillah or city judge, where to be preſented; and zillah or

or

city judge how to proceed if the ſame be preſented to him.

or to the provincial court of the diviſion; and in the former caſe the zillah or city judge ſhall immediately tranſmit the petition, with all papers and proceedings relative thereto, for the determination of the provincial court; till the receipt of which no further proceedings upon the cauſe ſhall be held in the zillah or city court."

What part of the uſual fees to be paid on theſe appeals, and by whom.

"*Third.* No inſtitution fee ſhall be demandable upon the ſummary appeals referred to in this ſection. And the provincial courts ſhall award to the pleaders employed therein ſuch proportion of the eſtabliſhed fees for pleaders, not exceeding one fourth, as may appear adequate to the ſervice performed by them; to be paid by the party who may have miſrepreſented the cauſe of action."

Section V. Diſpute between parties reſpecting any cauſe, inſtituted in a provincial court, being cognizable or not in the firſt inſtance by that court, how and under what rules to be decided.

§ V. "*Firſt.* In ſuits which may be inſtituted in the provincial court, if the plaintiff ſhall ſtate his cauſe of action to exceed five thouſand ſicca rupees, and the defendant ſhall, in anſwer, deny ſuch ſtatement, and allege the produce, amount, or value, to be ſuch as to render the ſuit cognizable by the zillah or city court in the firſt inſtance; the provincial court ſhall cauſe ſuch inquiry to be made as may appear neceſſary, to aſcertain whether the ſuit be cognizable in the zillah, city, or provincial court, under the proviſions of this regulation; and the determination of the provincial court, upon this point, ſhall be final. Provided, that no ſuch objection to the plaintiff's ſtatement of the cauſe of action ſhall be received from the defendant unleſs offered, in anſwer to the plaint, in the firſt inſtance."

If decided to be cognizable by a zillah or city court; to be inſtituted, *de novo*, in ſuch court.

"*Second.* In the caſes provided for in this ſection, if the provincial court determine that the ſuit is cognizable in the zillah or city court, the inſtitution fee paid by the plaintiff ſhall be returned to him; and he ſhall be left to inſtitute his ſuit, de novo, in the zillah or city court. If any pleaders

ſhall

ſhall have been employed in the provincial court, that court ſhall adjudge to them ſuch proportion of the eſtabliſhed fee, not exceeding one fourth, as they may judge adequate; to be paid by the plaintiff."

Section VI. What ſuits, of the nature ſpecified in Section II, now depending in the zillah and city courts, to be decided by thoſe courts.

§ VI. "*Firſt.* ANY regular ſuits of the nature ſpecified in Section II, which may have been already inſtituted in any zillah or city court, and, the pleadings and evidence having been completed, may be ready for deciſion, ſhall be determined in ſuch zillah or city court, notwithſtanding the preſent regulation. But the proceedings and papers upon any other regular ſuits of the deſcription mention in Section II, which may be depending in any zillah or city court on the promulgation of this regulation, ſhall be tranſmitted to the provincial court of the diviſion; and the parties referred to that court, for the further proſecution and defence of the ſuits ſo removed. Provided, however, that if in any inſtance, upon the repreſentation of the judge of a zillah or city court, or of a party in any cauſe now depending in a zillah or city court, the inveſtigation of a ſuit, within the proviſions of this regulation, though not completed, ſhall have been ſo far proceeded upon in the zillah or city court, as to make it deſirable that judgment upon it in the firſt inſtance ſhould be given in that court, it ſhall be competent to the provincial court of the diviſion to order the ſame; and to the zillah or city judge to complete his proceedings, and decide upon ſuch ſuit, in like manner as if this regulation had not been paſſed."

What to be tranſmitted for deciſion to the provincial court.

Rules reſpecting fees, in cauſes removed from a zillah or city court to a provincial court.

"*Second.* IN ſuits removed from the zillah or city courts to the provincial courts under this ſection, if the inſtitution fee have been paid by the plaintiff in the zillah or city court, no additional inſtitution fee ſhall be levied in the provincial court. And if any pleadings upon the cauſe have been delivered by the vakeels of the zillah or city court, the provincial court, on deciding the cauſe, ſhall make ſuch partition of the eſtabliſhed

ſee, between the pleaders of the two courts, as ſhall, in each caſe, appear equitable, on conſideration of the duty performed by them reſpectively."

General rule relative to the fees of pleaders.

"*Third.* It is further hereby declared, in qualification of the exiſting rules, relative to fees of pleaders, that whenever the pleader originally entertained by a party may have commenced the pleadings, and proſecution or defence, of a ſuit, and from any cauſe, not originating in the miſconduct of ſuch pleader, another pleader ſhall be employed in his ſtead, at the deciſion, or other termination of the ſuit, it ſhall be competent to the court, in which the ſuit is decided, or otherwiſe terminated, to adjudge to the pleader ſo employed at the commencement of the ſuit, (or if he be dead, to his heirs or legal repreſentatives,) ſuch part of the eſtabliſhed fee, as on conſideration of the ſervice performed by him, and by his ſucceſſors, he may appear entitled to."

Section VII. The proviſions of this regulation not applicable to ſummary ſuits of whatever amount.

§ VII. "The proviſions in this regulation having reference only to regular ſuits, ſuch as thoſe to which the rules contained in Regulations IV, 1793, VIII, 1795, and III, 1803, are applicable, all ſummary ſuits authorized by the regulations, whether for recovering the poſſeſſion of land or other property in caſes of forcible diſpoſſeſſion under Regulations XLIX, 1793, XIV, 1795, and XXXII, 1803; or for the ſpeedy realization of arrears of rent, under Regulations VII, 1799, V, 1800, and XXVIII, 1803; or for any other purpoſe in which a ſummary proceſs is ſanctioned by the regulations; ſhall be cognizable, as heretofore, in the zillah and city courts, whatever may be the produce, amount, or value, of the land, or other property, in diſpute."

Section VIII. Rules in addition to thoſe in force, for the guidance of provincial courts, with reſpect to

§ VIII. "The judges of the provincial courts are already empowered by the regulations, either to examine themſelves the witneſſes produced before them; or to authorize their regiſters

giſters to take the depoſitions of ſuch witneſſes, in the mode preſcribed by Section XVIII, Regulation V, 1793, extended to Benares by Section VI, Regulation IX, 1795, and re-enacted for the ceded provinces by Section XVIII, Regulation IV, 1803. The judges of the provincial courts are further hereby empowered to employ their aſſiſtants, or any of their principal native officers, to take the depoſitions of witneſſes, whom they may not have time to examine vivâ voce themſelves; in like manner as the judges of the zillah and city courts are authorized by Clauſe Firſt, Section XXI, Regulation XLIX, 1803, (re-enacted for the ceded and conquered provinces by Clauſe Third, Section XVII, Regulation VIII, 1805;) and under the proviſion therein ſtated."

taking depoſitions of witneſſes.

§ IX. "WHENEVER a witneſs, whoſe evidence is required by a provincial court, may reſide at ſuch a diſtance from the ſtation of the provincial court, as to render his attendance at ſuch ſtation inconvenient; or when, from any cauſe, it may be deemed improper by the provincial court to ſummon a witneſs to that court; it ſhall be competent to the provincial court to cauſe the depoſition of ſuch witneſs to be taken by the judge of the zillah or city in which the witneſs may reſide. In ſuch caſes the provincial court ſhall inſtruct the zillah or city judge upon what points the witneſs is to be examined; and the depoſition ſhall be taken, in open court, in the preſence of the parties, or their authorized pleaders, under the general rules preſcribed for the examination of witneſſes in the civil courts."

Section IX. In what caſes a provincial court may cauſe the evidence of a witneſs to be taken by the judge of the zillah, or city, where he reſides.

In what manner to be taken.

§ X. "IN caſes in which the provincial court may judge it adviſable, they are likewiſe empowered to cauſe the evidence of any witneſs to be taken, in the preſcribed form, before the judge of the provincial court, who ſhall next proceed upon the circuit to the zillah in which the witneſs may reſide."

Section X. In what caſes a provincial court may cauſe the evidence of a witneſs to be taken by one of the judges of that court, when on the circuit.

§ XI. "*Firſt.* SUCH part of the exiſting regulations, as di-

Section XI. Modification of exiſting rules

rects

For ſtaying the execution of decrees during appeals, in caſes for immovable property.

reſts that decrees appealed from, in caſes of land, houſes, or other immovable property, adjudged againſt the appellant, ſhall not be carried into execution during the appeal, provided the appellant give good and ſufficient ſecurity for performing the decree which may be paſſed upon the appeal, in a ſum equal to one year's produce of the property adjudged, is hereby modified, as follows."

Perſons ſuing for ſuch property, and obtaining a decree for it, to have poſſeſſion, notwithſtanding an appeal, on giving preſcribed ſecurity.

"*Second.* WHENEVER a perſon claiming the proprietary right in land, houſes, or other immovable property, not in his poſſeſſion, ſhall obtain a decree, upon inveſtigation of the merits of the caſe (whether in a zillah or city court, or in a provincial court of appeal, before which the ſuit may be tried in the firſt inſtance) adjudging him to be the proprietor of ſuch land, houſes, or other immovable property; he ſhall obtain poſſeſſion thereof in execution of ſuch decree, notwithſtanding an appeal therefrom, provided he ſhall give good and ſufficient ſecurity for performing the decree which may be paſſed upon the appeal, in a ſum equal to one year's produce of the property adjudged, if malgoozary land; or ten year's produce if the land be lakheraj; or the computed value, if it be a houſe, or immovable property of any other deſcription."

Unleſs the court to which the appeal is preferred, ſee cauſe for allowing the appellant to retain poſſeſſion.

"*Third.* PROVIDED however, that if the court, to which the appeal may be preferred in ſuch caſes, ſhall, in any inſtance, ſee ſpecial cauſe for leaving the appellant in poſſeſſion during the appeal, it ſhall be competent to that court to order the ſame; requiring, in ſuch caſe, from the appellant, the ſame ſecurity as is above required to be given by the reſpondent."

Proviſion for caſes of non-payment of revenue of diſputed lands during an appeal.

"*Fourth.* PROVIDED further, that whether the appellant or reſpondent be left in poſſeſſion of lands paying revenue to government, during an appeal, if the party in poſſeſſion of ſuch lands ſhall neglect to pay the revenue due upon the aſſeſſment; and a public ſale ſhall in conſequence be ordered to take place;

the

the party not in poſſeſſion, by payment of the revenue due, and giving the preſcribed ſecurity, previouſly to the ſale, ſhall be put in immediate poſſeſſion; and ſhall be entitled to charge the amount ſo paid, with intereſt thereupon, at the rate of one per cent per menſem, in any adjuſtment of accounts which may be directed in the final decree upon the cauſe."

Section XII. Preſent rules for ſtaying the execution of decrees during appeal, in cauſes for moveable property, to remain in force, with following addition.

" XII. " *Firſt.* The proviſions contained in the preceding ſection not being applicable to the execution of decrees for money, or other movable property; ſuch decrees ſhall be ſtayed, or enforced, in caſes of appeal, according to the rules now eſtabliſhed, with the following addition thereto."

What ſecurity to be given by appellants in ſuch cauſes.

" *Second.* The ſecurity to be given by appellants for ſtaying the execution of decrees appealed from, in caſes of money, or other movable property, or by reſpondents, when ſuch decrees are carried into execution during an appeal, ſhall be ſufficient, in addition to the amount or value adjudged, to cover the intereſt that may be expected to ariſe upon the amount payable under the decree, if confirmed in appeal, according to the proviſion for adjudging intereſt in ſuch caſes, made by Section III, Regulation XIII, 1796, and Section XXXV, Regulation IV, 1803."

Section XIII. Judges taking ſecurity in caſes of appeal, to be careful that it be good and ſufficient.

§. XIII. " The judges of the ſeveral courts, by which ſecurity may be taken from appellants or reſpondents, for performing the decrees to be paſſed on appeals, are enjoined to be particularly careful in aſcertaining that the ſecurity received is good and ſufficient; and they are required, in all caſes, to cauſe the nazir or other officer, by whom the property of the ſureties may be aſcertained, to deliver in as accurate a ſtatement as can be obtained of ſuch property; with a full report of the inquiry made reſpecting it; informing him, at

Meaſures to be adopted for this purpoſe.

the ſame time, that he will be held reſponſible for any wilful miſrepreſentation in his ſtatement or report."*

Limitations of time eſtabliſhed for cognizance of civil actions in the territories to which the regulations have been lately extended.

Periods fixed by Section VI, Regulation VIII, 1805, for the territories ceded by the Péſhwá, and Doulut Ráó Sendheea.

In extending to the territories ceded by the Péſhwá, and Doulut Ráó Sendheea, the laws and regulations for the adminiſtration of civil juſtice which had been eſtabliſhed in the provinces ceded by the Nuwáb Vizeer, (as ſtated in the preceding ſection,) it was provided by Clauſe Second of Section VI, Regulation VIII, 1805, that "in lieu of the date preſcribed by Section XVIII, Regulation II, 1803, the 30th of December 1803, in the provinces conſtituting the zillah of Allyghur, the northern and ſouthern diviſions of the zillah of Saharunpore, and the zillah of Agra; and the 16th of December 1803, in the territory conſtituting the zillah of Bundlecund; (being the dates on which the ſaid provinces and territories were reſpectively ceded to the Honorable the Engliſh Eaſt India Company) ſhall be conſidered the periods of limitation for taking cognizance of ſuits, ſubject to the ſeveral proviſions contained in Section XVIII, Regulation II, 1803, and in Sections II and III, Regulation II, 1805." It is further provided by Section IV, Regulation XII, 1806, that the 17th April, 1805, ſhall be conſidered the period of limitation for taking cognizance of civil ſuits in the pergunnahs of Sonk, Sonſa, and Sahar, before noticed as annexed to the Company's territories in purſuance of a treaty concluded, on that date, with the Rajah of Bhurtpore. In the diſtrict of Cuttack, and in the

By Section IV, Regulation XII, 1806, for pergunnahs Sonk, Sonſa and Sahar.

And by Section V, Regulation

* The rule contained in the laſt ſection of this regulation was ſuggeſted by experience of the frequent inſufficiency of ſecurities accepted for ſtaying the execution of decrees under appeal, whereby the parties who obtained a final judgment, confirming the deciſion before given in their favor, have, in ſeveral inſtances, ſuſtained material injury. A ſtrict obſervance of Section XIII, Regulation XIII, 1808, will, it may be hoped, prevent a recurrence of this ſerious detriment to the parties in civil ſuits. The proviſion made by Clauſe Third of Section VI, Regulation XIII, 1808, will alſo ſecure the pleaders in ſuch ſuits, from being deprived of an equitable compenſation for their ſervices, by the caprice or unreaſonable diſſatisfaction of their clients; or by any adventitious circumſtances, which may prevent their employment at the determination of a ſuit, in the proſecution or defence of which they may have previouſly acted.

pergunnahs

pergunnahs of Puttefpore, Kummardichour, and Bograe, (annexed to the zillah of Midnapore) the courts of Adawlut are prohibited by Section V, Regulation XIV, 1805, "from hearing, trying, or determining the merits of any civil ſuit whatever, if the cauſe of action ſhall have ariſen at a period, being twelve years antecedent to the 14th day of October 1803, the date on which the fort and town of Cuttack were ſurrendered to the Britiſh arms." It is alſo declared, by Section VI, of the ſame regulation, "that the powers veſted in the zillah courts by the foregoing clauſe, to receive and try ſuits, in which the cauſe of action ſhall have originated prior to the 14th October 1803, are to be reſtricted to the trial of ſuits of a private nature between individuals, of which cognizance would have been taken by the courts, officers, or authorities eſtabliſhed for the adminiſtration of juſtice under the government of Maha Rajah Raghoojee Bhoonſlah; and that ſuch powers are not to be conſidered to extend to authorizing the zillah courts to take cognizance of any civil ſuits, originating in acts of the Maha Rajah's government, or of his officers, or in engagements contracted by individuals with the officers of the Maha Rajah's government in their official capacities; and of which, according to the uſages of their government, cognizance would not have been allowed to be taken by the perſons entruſted with the exerciſe of judicial authority. This rule ſhall likewiſe be conſidered to be applicable to any ſuits in the zemindarries of Aul, Cojung, Puttrah, Hurriſhpore, Muritchpore, Biſhenpore, Kunkah and Kordah, or in which the zemindars, talookdars, farmers, ryots, or other inhabitants of thoſe mohauls, may be parties, either as plaintiffs or defendants, and of which according to the policy obſerved by the late Mahratta government with reſpect to thoſe mohauls, cognizance would not have been taken by the judicial officers of that government." If the zillah judge entertain doubts whether any ſuit preferred is cognizable by him under the ſtated reſtrictions, he is required by Section VII, Regulation

XIV, 1805, for Cuttack; and pergunnahs Puttelpore, Kummardichour, and Bograe.

R. XIV, 1805. §. VI. Further reſtriction of ſuits cognizable in Cuttack; and the three pergunnahs abovementioned.

Section VII. Zillah judge how to proceed if it appear doubtful whether a ſuit is cognizable un-

XIV.

der above re-strictions.

XIV, 1805, to report the circumstances of the case to the provincial court; "which court shall forward the same, with its opinion thereon, to the Sudder Dewanny Adawlut; and the Sudder Dewanny Adawlut shall submit the case to the Governor General in Council, and shall abide by such orders as he may pass with regard to the admission or rejection of the suit." It is further provided by Section VIII, of the regulation referred to, that "after the period of twelve years shall have elapsed from the date of the conquest of the province of Cuttack, the courts of Adawlut are prohibited from hearing, trying, or determining the merits of any civil suit, with the exception of the suits described in Sections II and III, Regulation II, 1805,* if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which the petition for the institution of such suit shall be presented to the court; unless the complainant can shew by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim, within that period, to the matter in dispute, to a court of competent jurisdiction; or person having authority, whether local or otherwise, for the time being, to hear such complaint, and to try the demand; and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he was precluded from obtaining redress; provided however, that it shall not be competent to the zillah courts, under the powers vested in them by this clause, to hear, try, or determine the merits of any civil suit whatever, if the cause of action shall have arisen previous to the 14th day of October 1803."

Section VIII. Rule of limitation to be observed after twelve years shall have elapsed from the date of the conquest of Cuttack.

R. II, 1806. For explaining and amending the rules of

REGULATION II, 1806, "for explaining and amending, in certain cases, the rules of process to be observed by the civil

* Vide section referred to in pages 58 to 61.

courts

courts of judicature," contains ſeveral important proviſions, enacted ſince the firſt part of this Analyſis was prepared, the grounds of which are ſtated in the following preamble to the regulation in queſtion.

proceſs to be obſerved by the civil courts.

"By the regulations in force, for the guidance of the zillah and city courts, one uniform proceſs is preſcribed for cauſing the appearance of all defendants in civil ſuits, not being Hindoo or Mahomedan women, of rank or quality, ſuch as, according to the cuſtom of the country, would render it improper to compel them to appear in an open court of juſtice; and not coming within the deſcription of perſons excepted from the general rule, by Section X, Regulation VIII, 1795; Section II, Regulation LV, 1795; and other ſpecial clauſes. The original proceſs ſo preſcribed is a ſummons on the defendant, requiring him to accompany the officer deputed to ſerve it; or to deliver ſufficient ſecurity to appear in perſon or by vakeel, and anſwer to the complaint againſt him on a day appointed. In the event of the defendant's being found, and his not giving the required ſecurity, the officer charged with the ſummons is to take his perſon into cuſtody, and bring him before the court; which is empowered to commit him to cloſe cuſtody until he ſhall give the requiſite ſecurity, or perform the decree, which may be paſſed upon the complaint againſt him. For the relief of defendants in caſes of undue or exaggerated demands, the judges of the zillah and city courts were authorized by Section II, Regulation III, 1802, (correſponding with Section VIII, Regulation XIV, 1803, for the ceded provinces) to fix the extent of the ſecurity to be required for the appearance of the defendant; with directions, whatever may be the claim of the plaintiff, to demand from the defendant ſuch ſecurity only, as may appear neceſſary to ſecure his appearance during the trial of the ſuit. But, except in petty cauſes, for money or property not exceeding in amount or value the ſum of ten ſicca rupees (in which the native com-

Preamble to this regulation, ſtating the grounds of the ſeveral rules contained in it.

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miſſioners are reſtricted by Section IX, Regulation XVI, 1803, and Section XVII, Regulation XLIX, 1803, from requiring ſecurity, unleſs they ſhall receive certain information that the defendant is about to abſcond, (the civil courts of judicature are not empowered to diſpenſe with the requiſition of bail from defendants, in any caſe not ſpecially provided for by the regulations; although in many inſtances the ſmall amount of the claim, and the known property and reſponſibility of the defendant, render the demand of ſecurity unneceſſary and vexatious. On the other hand, with an exception to the power veſted in the native commiſſioners of attaching the perſonal property, (inſtead of confining the perſon) of any defendant who may not give the ſecurity required for his appearance, the civil courts are not authorized to attach the property of any defendant, until a judgment be given againſt him; even when the defendant, againſt whom a ſummons may iſſiue, ſhall abſcond, or ſhut himſelf up in any building, or retire to any place ſo that the proceſs cannot be ſerved upon him; an *exparte* trial and deciſion only being provided for ſuch caſes, after proclamation in the court, and at the defendant's place of reſidence. A diſhoneſt debtor therefore, by concealing himſelf and diſpoſing of his property, is enabled to defraud his creditors and to defeat the ends of juſtice. At the ſame time a ſtrict application of the exiſting rule of final proceſs, in execution of decrees, (whereby the civil courts are directed to levy the amount adjudged, by the public ſale of a ſufficient portion, or if requiſite, of the whole of the lands, houſes and effects, belonging to the party againſt whom the judgment is given, or if neceſſary both by the ſale of his property and attachment of his perſon, without any diſcretion to grant relief from perſonal attachment in caſes of inſolvency,) enables rigorous creditors to exerciſe undue ſeverity towards their debtors, by keeping them in confinement (at a ſmall charge for their ſubſiſtence) when they have no means of diſcharging the amount demandable from them. And doubts

have

have been entertained whether the terms of the exiſting rules admit of any indulgence of time being allowed by the courts for the ſatisfaction of a final judgment, without the expreſs conſent of the party in whoſe favor ſuch judgment is paſſed. Alſo, whether the amount paid for the ſubſiſtence of perſons confined, in execution of decrees of the civil courts, is to be repaid by the party confined on his releaſe. To explain and amend therefore the exiſting rules of proceſs, in the ſeveral inſtances abovementioned; in ſuch manner as appears requiſite, expedient, and concluſive to juſtice; the Governor General in Council has enacted the following rules, to be in force, from the time of their promulgation, throughout all the provinces under the immediate government of the Preſidency of Fort William." As no abſtract of theſe rules would be ſufficiently clear and intelligible for practical inſtruction, they are here entered at length.

Rules enacted by Regulation II, 1806.

§. II. *Firſt.* Upon the inſtitution of a civil ſuit in the mode preſcribed by the regulations, in any zillah or city court, the general firſt proceſs againſt the defendant, inſtead of the ſummons and requiſition of ſecurity for appearance preſcribed by Section V, Regulation IV, 1793, and Section V, Regulation III, 1803, ſhall be a notice only, containing a ſhort ſtatement of the demand, with a requiſition to attend in perſon or by vakeel, and to deliver an anſwer to the plaint, on or before a certain day, to be ſpecified in the notice."

Section II. Notice to be iſſued to defendants in civil ſuits, in the firſt inſtance.

"*Second.* If the defendant have an accredited agent at the place where the court is held, expreſsly empowered, either by a clauſe in his general moktarnamah, or by a ſeparate moktarnamah granted for that purpoſe, to receive on behalf of his conſtituent notices or other judicial proceſſes, which may not be ſpecially ordered to be ſerved perſonally by an officer of the court; the notice to be iſſued under the preceding clauſe ſhall be tendered to ſuch agent, to be communicated

Notice how to be ſerved if the defendant have an accredited agent at the place where the court is held.

ted to his principal; and the agent's acknowledgement, to be endorſed upon it, ſhall be accepted as a ſufficient ſervice of it; if he be deſirous of giving ſuch acknowledgement in preference to the notice being ſerved on the perſon of his principal by an officer of the court."

Notice how to be ſerved if the defendant have no accredited agent on the ſpot; or if ſuch agent decline to receive it for his conſtituent.

"*Third.* If the defendant ſhall not have an accredited agent at the place where the court is held, or if he ſhall not have expreſsly authorized his agent to receive notices of the above deſcription; or if ſuch agent ſhall decline receiving the notice for communication to his conſtituent, and the defendant be reſident within the juriſdiction of the court; it ſhall be ſerved on him through the nazir of the court, by a ſingle chupraſſy or peon; who ſhall require only the acknowledgement of the defendant to be endorſed upon it, or if he be abſent from his uſual place of reſidence, the acknowledgement of his principal agent, or of any perſon acting for him during his abſence. If the defendant be reſident within the juriſdiction of any other zillah or city court than that in which the ſuit may have been inſtituted; the notice ſhall be tranſmitted to the judge of the zillah or city, in which the defendant may reſide, to be ſerved in the manner above directed. If the defendant be neither reſident within the juriſdiction of the zillah or city court in which the ſuit may be inſtituted, or of any other zillah or city court; and the ſuit ſhall notwithſtanding be cognizable; either in claims to landed or other immovable property, from the property claimed being ſituated within the juriſdiction of the court; or in other caſes from the cauſe of action having ariſen within its juriſdiction: the notice, if the ſuit be for land or other immovable property, ſhall be ſerved upon the defendant's agent or repreſentative in charge of ſuch property; and in other ſuits the judge ſhall cauſe notice of the claim to be conveyed to the defendant, in ſuch manner as may appear moſt certain and convenient according to the circumſtances of the caſe."

Proviſion in caſe the defendant be not reſident within the juriſdiction of the court.

"*Fourth.*

" *Fourth.* The notice iſſued under the preceding clauſes of this ſection to weavers or others employed in the proviſion of the Company's inveſtment, and to molungees and others employed in the manufacture of ſalt, ſhall be ſerved in the manner directed by the exiſting regulations with reſpect to the ſervice of ſummonſes upon perſons ſo employed, when ſued as defendants in the civil courts."

Notice how to be ſerved upon perſons employed in providing the Company's inveſtment; or in the manufacture of ſalt.

§ III. " If a defendant to whom a notice may have been iſſued, as directed in the preceding ſection, ſhall abſcond; or is not after diligent ſearch to be found; or ſhall ſhut himſelf up in any houſe or building, or retire to any place, ſo that the notice cannot be ſerved upon him; the judge (or the regiſter in cauſes referred to him) on receiving the Nazir's return to this effect, ſhall iſſue a proclamation, as directed in ſimilar caſes when a ſummons cannot be ſerved upon a defendant, by Section XI, Regulation IV, 1793, and Section XIII, Regulation III, 1803. If the defendant ſhall not appear in perſon or by vakeel, by the time limited in ſuch proclamation; or if a defendant, who may have been ſerved with a notice, as directed in the preceding ſection, ſhall not appear in perſon or by vakeel, within the time ſpecified; or if, having appeared, he ſhall refuſe to anſwer the plaint, or make other default; the court, as provided in the ſections abovementioned, ſhall proceed to try the cauſe *exparte*; and after examining the plaintiff's evidence in ſupport of his claim, ſhall give judgment, in the ſame manner as if the defendant had appeared, anſwered and entered into proof."

Section III. Court how to proceed if the defendant, to whom a notice may have been iſſued, abſcond; or is not to be found; or conceal himſelf ſo that the notice cannot be ſerved upon him.

Or if a defendant, ſerved with the notice, ſhall not appear in perſon or by vakeel; or ſhall refuſe to anſwer or make other default.

§. IV. " If a defendant, after receiving the notice preſcribed in Section II, ſhall attend in perſon or by vakeel, and deliver his anſwer to the plaint, and no reaſon ſhall ſubſequently appear to the court for requiring ſecurity for his appearance, during the trial of the ſuit; he ſhall be allowed to defend the cauſe, to its determination, without being called upon for

Section IV. In what caſes a defendant may be required to give ſecurity for his appearance.

ſuch ſecurity. But if the judge (or regiſter) ſhall be ſatisfied, by ſufficient proof, that there is reaſon to believe the defendant intends to abſcond, and withdraw himſelf from the juriſdiction of the court, he may either on the inſtitution of the ſuit, or at any time whilſt the ſuit is depending in the zillah or city court, iſſue proceſs againſt the defendant, requiring him to give ſecurity for his appearance, as preſcribed on the iſſue of ſummonſes, by Section V, Regulation IV, 1793, and Section V, Regulation III, 1803; under penalty of being committed to cloſe cuſtody until ſuch ſecurity be given, or the decree of the court be complied with; as provided in the abovementioned ſections; or until an attachment of property ſhall have taken place, to ſecure the execution of the ultimate judgment in the cauſe, under the proviſion made by the following ſection of this regulation. The ſecurity bond, to be executed in ſuch inſtances, ſhall in ſubſtance correſpond with that preſcribed by Section III, Regulation XI, 1797, and Section XXIX, Regulation III, 1803; and in fixing the extent of the ſecurity to be required, the judge (or regiſter) is authorized to exerciſe the diſcretion veſted in him by Section II, Regulation III, 1802; and Section VIII, Regulation XIV, 1803.

And under what penalty if the ſecurity required be not given.

What ſecurity bond to be executed in ſuch inſtances.

And diſcretion to be exerciſed in fixing the extent of the ſecurity.

Section V. In what caſes malzaminy, or ſecurity for property, may be required.

§. V. "*Firſt.* In any caſe if the judge (or the regiſter in cauſes referred to him) be ſatisfied by ſufficient proof, that there is ground to apprehend the defendant means to diſpoſe of the property in his poſſeſſion by any private transfer; or to cauſe the public ſale of any diſputed land, by withholding the aſſeſſment upon it; or to remove any perſonal property from the juriſdiction of the court, whilſt the ſuit againſt him is depending; for the purpoſe of avoiding the execution of an eventual judgment againſt him; the judge (or regiſter) is authorized to call upon the defendant for malzaminy ſecurity, in ſuch ſum as may appear ſufficient to make good the ultimate judgment of the court; and in the event of ſuch

ſecurity

ſecurity not being given (within a reaſonable time to be allowed for that purpoſe) to cauſe the attachment of any land, effects, or other property belonging to, or poſſeſſed by, the defendant, to the amount or value of the cauſe of action in the ſuit depending; or the attachment of which may be deemed neceſſary to ſecure the execution of the judgment to be paſſed in the cauſe."

And property attached if ſuch ſecurity be not given.

"*Second.* The attachment in ſuch caſes ſhall be made by a written order of the court, to be read and proclaimed upon the ſpot, and to be affixed in ſome conſpicuous ſituation at the place where the property is ſituated; after which any private alienation of the property ſequeſtered, whether by ſale, gift, or otherwiſe, during the continuance of the attachment; ſhall be deemed illegal and void; and any unauthorized removal of the property ſo attached, during ſuch period, with a view to oppoſe or evade the ſequeſtration, ſhall be puniſhable, on proof, as an act of reſiſtance to the proceſs of the court; according to the proviſions in force concerning reſiſtance to the proceſs of the civil courts. In ſuits for landed property of conſiderable value, wherein it may appear neceſſary, for the purpoſes of juſtice, to diveſt the defendant from the management of the land until the ſuit be decided, or mal-zaminy ſecurity be given, the attachment ſhall be made through the collector of the diſtrict in which the land is ſituated; as preſcribed by Section VI, Regulation V, 1798, and by Clauſe Ninth of Section XII, Regulation IV, 1803, in appealed caſes, wherein neither the appellant nor reſpondent may be able to give ſecurity for ſtaying the execution of the decree. But in other caſes the attachments, which may be ordered under the preſent rule, ſhall not, without ſpecial cauſe, to be recorded on the proceedings of the court, remove the defendant, or his repreſentative, from the poſſeſſion or management of the land, or other property attached, until a deciſion be paſſed in the cauſe before the zillah or city court;

In what manner the attachment to be made in ſuch caſes.

Any private alienation of the property attached declared illegal and void.

And any unauthorized removal of property during attachment, how puniſhable.

In what inſtances the attachment to be made through the collector of the diſtrict in which the land is ſituated.

In other caſes, the attachment not to remove defendant, or his repreſentative, from the poſſeſſion or management of the land, or other property, without ſpecial cauſe, to be recorded.

court; nor be underſtood to preclude any act of the defendant, or his repreſentative, relative to ſuch property, which may be conſiſtent with the object of the attachment."

What orders to be paſſed, on deciſion of the ſuit relative to property attached.

How far anſwerable for execution of decree, if againſt the defendant.

"*Third.* UPON the deciſion of the ſuit, the judge (or regiſter) ſhall paſs ſuch further order relative to the property attached as may be juſt and conformable with the judgment given in the cauſe. If the decree be againſt the defendant, all right and intereſt poſſeſſed by him in the property attached (ſaving arrears of rent or revenue due from land, and any other bonâ fide claims which may be entitled to ſatisfaction in preference to the decree) ſhall be held anſwerable for the execution of the judgment, in the mode preſcribed by the regulations. But if the plaintiff's claim be diſmiſſed, or be not in any conſiderable proportion eſtabliſhed againſt the defendant, all expence and loſs to the defendant, which may ariſe from the attachment of his property in conſequence of ſuch claim, ſhall be reimburſed to him by the plaintiff, as part of the coſts of ſuit."

In what caſes all expenſe and loſs to the defendant, from attachment, to be reimbursed to him by the plaintiff.

Section VI. Proviſion for ſpeedy trial and deciſion of the ſuit, in caſes of attachment.

§ VI. "WHENEVER any property may be attached by order of a zillah or city court, under the proviſions contained in the foregoing ſection, the trial of the cauſe ſhall be proceeded on, and brought to a concluſion, as ſpeedily as poſſible, without regard to the order of time, with reſpect to other depending cauſes, in which it may have been inſtituted. The attachment ſhall alſo be taken off on the delivery of ſufficient malzaminy ſecurity, at any time previous to the deciſion of the cauſe in the zillah or city court."

Attachment to be taken off, at any time before deciſion of the cauſe, on delivery of ſufficient malzaminy.

Section VII. Preceding rules declared applicable to caſes in appeal before provincial courts, or Sudder Dewanny Adawlut.

§ VII. "THE proviſions contained in the two preceding ſections ſhall be held equally applicable to the provincial courts of appeal, and Sudder Dewanny Adawlut, in all caſes wherein an attachment of property, made by a zillah or city court, may be continued during the trial of an appeal before

a provincial court, or the court of Sudder Dewanny Adawlut; or in which thoſe courts may judge it proper to order an attachment of property, in default of ſecurity being given, as required; either by the appellant or reſpondent in any depending appeal."

§ VIII. "WHEN perſonal bail, or ſecurity for money or other property, may be demandable from a party in any original civil ſuit, or appeal; and he ſhall tender a depoſit of money, or of promiſſory notes, or other obligations of government, or any other ſufficient money ſecurity, to the amount required; ſuch depoſit ſhall be accepted inſtead of hazirzaminy or malzaminy ſecurities; and ſhall be carefully kept by the treaſurer of the court; to be reſtored, or diſpoſed of as the court may direct, on the termination of the cauſe, or whenever the purpoſe, for which the depoſit is made, ſhall have been accompliſhed."

Section VIII. A depoſit of money, or of promiſſory notes, or other obligations of government, or other ſufficient money ſecurity, to be received when tendered, inſtead of hazirzaminy, or malzaminy.

§ IX. "ALL native commiſſioners empowered to act as munſiffs, aumeens, or arbitrators, ſhall be guided by Section II, of this regulation, directing a notice only to be iſſued to defendants in the firſt inſtance, without requiſition of perſonal ſecurity, except on proof that the defendant is about to abſcond. But nothing in the preſent regulation ſhall be underſtood to authorize any native commiſſioner to require perſonal ſecurity from defendants, or to attach their property; except in the caſes wherein ſuch authority is already declared to be veſted in them, by Section XI, Regulation XL, 1793; Section IX, Regulation XVI, 1803; and Section XVII, Regulation XLIX, 1803. The judges of the zillah and city courts, and the regiſters of thoſe courts, with the ſanction of the judge, may however iſſue any of the proceſſes authorized by this regulation, in ſuits referred to a native commiſſioner, ſudder or moſuſſil; whenever ſuch proceſſes may appear neceſſary, and applicable to the caſe in reference."

Section IX. How far the proviſions in this regulation are applicable to defendants in ſuits before the native commiſſioners.

Section X. In what cases the civil courts may, or may not, provide for the payment of sums adjudged, by instalments.

§ X. "Doubts having been entertained whether any of the eſtabliſhed zillah and city courts are competent to provide, in their decrees, for the payment by inſtalments of money adjudged by them, or to make ſuch proviſion, in caſes of indigence, at any period after paſſing their decrees; it is hereby declared, that the civil courts in general are reſtricted from granting indulgence of time, in the ſatisfaction of a final judgment, when property, from which ſuch judgment can be ſatisfied, (whether belonging to the party againſt whom the judgment is given, or to his ſurety or ſureties, for the performance of ſuch judgment) may be forthcoming; unleſs the party, in whoſe favor the decree is paſſed, ſhall conſent to wave his right of immediate enforcement, under an engagement for gradual payment, or otherwiſe; or unleſs a ſhort poſtponement of the ſale of property ſhall, under any particular circumſtances, appear juſt and equitable. But when no property may be pointed out from which the judgment can be enforced, and the party againſt whom it is paſſed, or his ſurety if he have given any, may be willing to engage, (under ſufficient malzaminy or hazirzaminy ſecurity, as one or the other may be tendered or required) for the liquidation of the amount due, by inſtalments, within ſuch period, as the court paſſing the final decree, or entruſted with the execution of it, ſhall deem reaſonable and proper, it ſhall be competent to the court, by which the final judgment is given, or to a zillah or city court enforcing the deciſion of a native commiſſioner, and to any ſuperior court reviſing the proceedings of an inferior court, to accept the engagement ſo offered, and to cauſe execution of the decree in conformity therewith, ſo long as the conditions of it ſhall be duly fulfilled. In ſuch caſes, if the perſon delivering the accepted engagement ſhall have been taken into cuſtody, he ſhall be immediately diſcharged; and ſhall not be liable to further arreſt in execution of the judgment to which ſuch engagement may refer, except on failure to perform the terms of it; nor ſhall any

Reſtriction when property of the perſon againſt whom the judgment is given, or his ſurety, may be forth coming.

Diſcretion veſted in the courts, when no property is pointed out, from which the judgment can be enforced.

intereſt

intereſt be chargable in ſuch inſtances beyond what may be provided for in the engagement."

Section XI. Proviſion for the relief of inſolvent debtors confined under decrees of the civil courts.

§. XI. "For the relief of inſolvent debtors and their ſureties, who may be in confinement for the ſatisfaction of decrees of the civil courts, and may have no means of diſcharging the amount demandable from them, by inſtalments or otherwiſe, the judges of the zillah and city courts, the provincial courts of appeal, and the court of Sudder Dewanny Adawlut, are further empowered, on receiving from the perſon, or perſons confined, in ſuch caſes, a ſtatement upon oath, containing a full and fair diſcloſure of all property belonging to them, whether in land, money, or effects, or of whatever deſcription; and whether held in their own names, or in the names of any other perſons, or jointly with others; to cauſe inquiry to be made for the purpoſe of aſcertaining the truth of ſuch ſtatement, or the validity of any objections thereto, which may be offered by the party at whoſe inſtance the priſoner or priſoners may be in confinement; and if the reſult of ſuch inquiry ſhall ſatisfy the court, that the ſtatement of property ſo delivered is true and faithful, and that the perſons confined poſſeſs no other means of diſcharging the amount demandable from them, and the property included in the ſtatement, or ſuch part thereof as the court may deem it proper to ſell, in ſatisfaction of the judgment paſſed, ſhall be given up for ſale; the court, on receiving ſuch ſurrender of property, may cauſe it to be ſold, in the mode preſcribed by the regulations; and may order the releaſe of the perſon or perſons in confinement, either with or without hazirzaminy ſecurity, for his or their appearance when required. Provided, however, that nothing in this ſection, which is meant to grant relief in caſes of real inability and fair dealing only, ſhall entitle any debtor or ſurety, confined under the judgment of a civil court, to be releaſed, without full ſatisfaction of ſuch judgment, if he ſhall be guilty of any fraudulent concealment of property; or ſhall have committed

Reſtriction of intended relief to caſes of real inability and fair dealing.

mitted any manifeſt fraud or miſdemeanour, which may appear to the court to render him an improper object of the relief intended for perſons acting with good faith; and willing to ſurrender all the property in their poſſeſſion for the benefit of their creditors. Nor ſhall releaſe from confinement, in any inſtance under this ſection, prevent the creditor from bringing to ſale (by application to the court) in full payment of the ſum adjudged due to him, any property which may be ſubſequently poſſeſſed by the party releaſed; or from cauſing ſuch party to be again confined until the judgment be fully ſatisfied, when it may appear, by ſufficient proof, that he had fraudulently concealed any property actually belonging to, and known to have been poſſeſſed by him, either in his own name, or that of others in his behalf, at the time of his diſcharge. Provided further, that all proceedings held and orders paſſed, by the judges of the zillah and city courts, under the diſcretion veſted in them by this ſection, ſhall, on repreſentation of the parties affected thereby to the provincial courts of appeal, be open to the reviſion and determination of thoſe courts; and in like manner, all orders paſſed by the provincial courts under this ſection ſhall be open to the final deciſion of the Sudder Dewanny Adawlut."

Releaſe of debtors, under this regulation, not to prevent the ſale of any property ſubſequently poſſeſſed by them, in full payment of ſums adjudged againſt them.

Or their being again confined, in caſes of fraudulent concealment of property.

Proceedings and orders of zillah courts open to reviſion of the provincial courts.

And orders of provincial courts open to final deciſion of the Sudder Dewanny Adawlut.

§ XII. "A QUESTION having ariſen whether the amount paid for the ſubſiſtence of perſons in confinement, under judgments of the civil courts, as preſcribed by Section VIII, Regulation IV, 1793, and Section X, Regulation III, 1803, is to be repaid by the party confined, on his releaſe; it is hereby explained, that ſuch repayment is to be made, in common with the reimburſement of other coſts of ſuit and proceſs, when any property may be forthcoming from which the amount can be levied. But when no property can be pointed out for the reimburſement of the ſubſiſtence money paid to priſoners, they ſhall not be detained in confinement for the repayment of ſuch money only."

Section XII. Amount paid for ſubſiſtence of perſons confined in execution of civil judgments to be repaid, with other coſts, when property is forthcoming.

But parties not to be detained in confinement on this account only.

In

Parts of Regulation XLIX, 1803, re-enacted for the ceded and conquered provinces, by R. VIII, 1805.

In a note to the firſt part of this Analyſis *, it was remarked that ſuch parts of Regulation XLIX, 1803, (for the occaſional appointment of aſſiſtant judges of the zillah and city courts for altering and extending the juriſdiction of the regiſters of thoſe courts; for fixing a new limitation of appeals to the provincial courts; and for amending the former rules concerning the appointment and power of native commiſſioners for the trial of civil ſuits;) as had not been previouſly included in the regulations for the ceded and conquered provinces, were extended to thoſe provinces by Regulation VIII, 1805. It will now be proper to ſpecify the proviſions ſo extended; or rather re-enacted for the ceded and conquered provinces, in modification of the rules before ſtated.

C. P. JR. VIII, 1805, § VI, C. 4.
All ſuits tried and decided by the zillah judges, in the firſt inſtance, declared appealable to the provincial courts.

By the fourth clauſe of Section VI, Regulation VIII, 1805, Section XXI, Regulation II, 1803, is reſcinded; and it is declared, that "an appeal ſhall lie to the provincial courts of appeal, under the rules preſcribed by Regulation IV, 1803, from the deciſions of the courts of adawlut of the ſeveral zillahs in the ceded and conquered provinces, in all ſuits or matters whatſoever, which ſhall be tried by the judges of thoſe courts in the firſt inſtance; viz. without a previous trial and deciſion by their regiſters, or by any of the native commiſſioners appointed under Regulation XVI, 1803." By the fifth, ſixth, and ſeventh clauſes of the above ſection, the ſame limitation is fixed for appeals to the provincial courts, in ſuits tried by the zillah regiſters, in the firſt inſtance, and determined on appeal from their deciſions by the judges of the zillah courts, as was eſtabliſhed by Section VIII, Regulation XLIX, 1803, for the provinces of Bengal, Behar, Oriſſa, and Benares. † In the eighth clauſe of the ſame ſection, it is further declared, that "In ſuits tried in the firſt inſtance, by any native com-

Clauſes 5, 6, 7.
In caſes determined by the zillah judges on appeal from deciſions of their regiſters, ſame ſtandard for appeals to provincial courts fixed in ceded and conquered provinces, as in other provinces.

Clauſe 8.
In appeals from deciſions of native commiſſioners, decree of zillah judge

* Page 193.

† See pages 107 and 108.

 miſſioner,

shall, as heretofore; subject to special appeal to provincial court.

missioner, appointed under Regulation XVI, 1803, and decided on appeal by the zillah judge, the decision of the latter shall be final as heretofore; provided the cause were originally cognizable by a native commissioner, under the prescribed limitations; and subject to the discretion vested in the provincial court of appeal to admit an appeal in special cases."

C. P. R. VIII, 1805, § IX, C. 1 to 5. Provision for special appeals to provincial courts, made by Section XXIV, Regulation XLIX, 1803, extended to ceded and conquered provinces.

Clause 6. Also for appeals in all cases of default.

By Section IX, Regulation VIII, 1805, the discretionary power vested in the provincial courts by Section XXIV, Regulation XLIX, 1803, of admitting special appeals from the decisions of the zillah courts, in cases wherein a regular appeal might not lie, * which had not before been expressly extended to the ceded and conquered provinces, was declared to be in force in those provinces. The provisions contained in Section XXVI, Regulation XLIX, 1803, relative to appeals to the provincial courts, or Sudder Dewanny Adawlut, in cases of default, were also re-enacted for the ceded and conquered provinces in the sixth clause of Section IX, Regulation VIII, 1805 †

C. P. R. VIII, 1805, § XII. Rules for occasional appointment of assistant judges, extended to ceded and conquered provinces.

The rules in Sections II, III, IV, and V, Regulation XLIX, 1803, for the occasional appointment of assistant judges when requisite, ‡ were extended to the ceded and conquered provinces by Section XII, Regulation VIII, 1805. The authority

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* See page 110.

† Vide page 109.

‡ The three first sections are detailed in pages 98, 99, and 100. Section V, Regulation XLIX, 1803, is noticed, with other provisions on the same subject, in pages 174 and 175. It may further be remarked in this place, that the rule therein cited from Section XV, Regulation II, 1801, whereby the judges of the provincial courts of appeal and courts of circuit are directed to apply for leave of absence from their stations, to the Governor General in Council, instead of applying, as before directed, to the courts of Sudder Dewanny Adawlut, and Nizamut Adawlut, was extended to the ceded and conquered provinces by the seventh clause of Section XIV, Regulation VIII, 1805.

vested

vested in the zillah and city judges by Section VI, Regulation XLIX, 1803, to refer to their registers, for trial and decision in the first instance, suits for personal property not exceeding five hundred sicca rupees, or for malguzarry land, the annual produce of which may not exceed five hundred sicca rupees, or for lakheraj land, not producing above fifty sicca rupees per annum, or for other real property the computed value of which may not be above five hundred sicca rupees, was also extended to the ceded and conquered provinces by Section XVI, Regulation VIII, 1805; together with the other provisions respecting suits referrible to the registers of the zillah and city courts, in Section VI, Regulation XLIX, 1803. * Sections XX, and XXI, Regulation XLIX, 1803, whereby the judges of the zillah and city courts were empowered to employ their registers and assistants in signing and issuing any process of court not specially required to be signed by the judges, as well as to employ their registers, assistants, or principal native officers, in taking the depositions of witnesses, under certain restrictions, and to permit their registers to exercise a similar discretion in causes referred to them, were likewise re-enacted for the ceded and conquered provinces by Section XVII, Regulation VIII, 1805.†

Section XVI. And for reference of cases not exceeding five hundred rupees, to zillah registers.

Section XVII. Also for employing registers and assistants in signing and issuing process of court.

Or, in taking depositions of witnesses. Principal native officers may also be employed in this duty.

The rules contained in Regulation XLIX, 1803, for the appointment of head native commissioners, with authority to try causes referred to them by the judges of the zillah and city courts, to the amount or value of one hundred sicca rupees, and for amending the former rules concerning the appointment and powers of native commissioners for the trial of suits for personal property not exceeding fifty sicca rupees, are included in Regulation XII, 1803, for the ceded provin-

Rules contained in Regulation XLIX, 1803, for appointment of head native commissioners, included in Regulation XII, 1803, for the ceded provinces.

* See the whole of these provisions in pages 88 and 89.

† The provisions of Sections XX, and XXI, Regulation XLIX, 1803, are cited partly in pages 70, 71, and partly in pages 89, 90.

ces;

Further provisions in Regulation XV, 1805.

ecs; and have been already ſtated.* But with a view to provide for the appointment of two or more ſudder ameens, or head referees, in any zillah or city, wherein the adoption of this meaſure might be found expedient, as well as to appoint the Mahomedan and Hindoo law officers of the zillah and city courts to be ſudder ameens of the zillahs, or cities, in which they are reſpectively employed, (the ſalary received from government by ſuch officers, with their general reſpectability of character, and ſuperior knowledge, affording the ſtrongeſt grounds of confidence, that the powers of referee, in ſuch cauſes as the judges may deem proper to be referred to them, will be executed with integrity and impartiality) the following rules have been enacted by Regulation XV, 1805, for all the provinces immediately under the preſidency of Fort William.

Section II. Law officers of the zillah and city courts to be ſudder ameens, by virtue of their offices.

§ II. "THE Mahomedan and Hindoo law officers of the zillah and city courts of civil judicature ſhall, by virtue of their offices, be deemed ſudder ameens, or head referees, of the zillah or city, in which they may be reſpectively employed, for the trial, and deciſion, in the firſt inſtance, of any ſuits which may be referred to them by the zillah and city judges, within the limitations preſcribed by Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803."

Section III. What provisions in exiſting regulations, applicable to the law officers, in their capacity of ſudder ameen.

§ III. "THE whole of the proviſions contained in Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803, as far as the ſame can be applied to the law officers of the zillah and city courts in their capacity of ſudder ameen, ſhall be held equally applicable to them, as to the head referees deſcribed in thoſe ſections. But under the

* With the general rules for the appointment of native commiſſioners. Pages 90 to 98.

proviſion

proviſion made by the preceding ſection of the preſent regulation, it will not be neceſſary to grant ſunnuds of appointment to the law officers, in their capacity of ſudder ameen, as directed with reſpect to the head native commiſſioners appointed under Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803."

Section IV. What compenſation to be allowed them, for cauſes decided by, or adjuſted before them.

§ IV. "The law officers of the zillah and city courts, in their capacity of ſudder ameen, as a compenſation of their trouble, and for the expenſe of ſuch eſtabliſhment as may be neceſſary for the diſcharge of their duty in that capacity, ſhall be entitled to receive the inſtitution fee, paid in all ſuits decided by them upon inveſtigation of the merits, or depending before them when adjuſted by razeenamahs of the parties, in the ſame manner, and under the ſame reſtrictions, as provided with reſpect to other native commiſſioners, by Clauſe Seventh, Section IV, Regulation XLIII, 1803, and by Section XI, Regulation XLIX, 1803."

Section V. Sudder Dewanny Adawlut empowered to appoint two or more ſudder ameens, in addition to the law officers; whenever it may appear expedient.

§. V. "WHENEVER it may appear expedient, on conſideration of the number of civil cauſes depending in a zillah or city court, that more than one head native commiſſioner ſhould be appointed in ſuch zillah, or city, in addition to the Mahommedan and Hindoo law officers, the court of Sudder Dewanny Adawlut are empowered to authorize the appointment of two or more ſudder ameens or head referees, for the trial and deciſion, in the firſt inſtance, of any ſuits which may be referred to them by the zillah or city judge, within the limitations preſcribed by Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803.

Former rules for receiving complaints in the civil courts againſt collectors, commercial reſidents, and other European officers.

REGULATION VIII, 1806, "to amend the exiſting rules for receiving complaints in the city and zillah civil courts, againſt collectors of the land revenue and cuſtoms, commercial reſidents, and other European public officers declared amenable to

 thoſe

Amenable to thoſe courts, amended by Regulation VIII, 1806.

And proviſion for a ſpecial inquiry, in certain caſes of charge or information, againſt ſuch officers.

thoſe courts, for acts done in their official capacity, in oppoſition to any publiſhed regulation; and to make further proviſion for a ſpecial enquiry, in certain caſes of charge, or information, againſt any ſuch officers;" has been already adverted to * in ſtating the rules enacted by Regulation X, 1806, "for extending to the judicial department ſuch parts of Regulation VIII, 1806, as are applicable to charges, or information, againſt the European public officers, employed in that department; and for making further proviſion in ſuch caſes." But as the former rules, declaring collectors, commercial reſidents, and other public officers, amenable to the civil courts, for acts done in their official capacity, in oppoſition to the regulations, as well as the proviſion made for a redreſs of grievances, under the regulations, by acts done in purſuance of ſpecial orders from the Governor General in Council, or from the Boards of Revenue and Trade, were ſtated in the Firſt Part of this Analyſis;† it is neceſſary to add, in this place, the amendments and further proviſions made by Regulation VIII, 1806, with the grounds upon which they were founded. And this will be beſt done, by giving the Regulation itſelf, with its preamble, to the following effect.

Preamble to R. VIII, 1806.

"By Section X, Regulation III, 1793, (extended to Benares by Section VII, Regulation VII, 1795; and re-enacted for the ceded provinces by Section VII, Regulation II, 1803,) collectors of the revenue, commercial reſidents or agents, ſalt agents, collectors of the cuſtoms or other duties, the mint and aſſay maſters, and their reſpective aſſiſtants, (as well as the native officers employed under them reſpectively) are declared amenable to the zillah or city court of dewanny adawlut in the juriſdiction of which they may reſide, or carry on the public buſineſs committed to their charge, for any

* In a Note to page 461.

† In Pages 43 and 44.

acts

acts done in their official capacity, in oppoſition to any regulation printed and publiſhed in the preſcribed form. Similar proviſions are contained in the regulations which have particular reference to the functions and duties of the ſeveral public officers ſpecified; and to thoſe of the opium agents. It is further provided by the regulations referred to, that if the complainant conſider himſelf aggrieved, under any publiſhed regulation, by an act done by any of the officers deſcribed, in purſuance to a ſpecial order originating with the Governor General in Council, or with the Board of Revenue, or the Board of Trade; or, with reſpect to demands of revenue, if he admit the demand to be conformable to the engagements or ſtipulations under which the collector may have made the demand, but deny their validity, or have any objections to them, either wholly or in part, under any regulation paſſed by the Governor General in Council; the collector, or other public officer, is not to be liable to perſonal proſecution on account of ſuch authorized act, or on account of demands made in conformity to ſuch engagements, or ſtipulations, which are to be held valid until they are ſet aſide, or altered, by a final judicial deciſion. In ſuch caſes government is to be conſidered the defendant; and the perſon deeming himſelf aggrieved is directed to preſent a petition to the judge of the zillah or city court, having juriſdiction over the officer by whom the act complained of may have been done, ſtating wherein he conſiders himſelf injured under the regulations, and praying that the Governor General in Council will order the court, in which the cauſe may be cognizable, to try the points or matters conteſted agreeably to the regulations. The judge, to whom any ſuch petition may be preſented, is required to forward it immediately to the Governor Genral in in Council; who has declared that, if he ſhall not think it proper to afford the redreſs ſolicited by the petitioner, and the eſtabliſhed courts of juſtice ſhall be competent to try the

cauſe,

cauſe, he will direct the court, in which it may be cognizable, to proceed to the trial of it, under the ſame rules and regulations as are preſcribed for the trial of ſuits between individuals. The officer, by whom the act complained againſt may have been done, is, in ſuch caſes, to defend the ſuit on the part of government, under the directions of the Governor General in Council, or of the Board of Revenue, or Board of Trade, (according to the authority under which he may have acted;) and he is to employ for this purpoſe the vakeel of government attached to the court in which the ſuit may be tried. But in all other caſes, viz. excepting ſuch as are ſpecially declared to be ſuits againſt government, the officer complained againſt is left to defend the ſuit by any vakeel he may think proper to employ, and at his own ultimate riſk and expenſe, if his conduct ſhall appear, on judicial inveſtigation, to have been repugnant to, or unwarranted by, the regulations; though in ſuits involving any claim to money received or demanded on behalf of government, all coſts of ſuit are allowed to be diſburſed, in the firſt inſtance, from the public treaſury; and the officer complained againſt is ſecured from perſonal loſs, if his conduct ſhall be adjudged by a final decree to have been conformable to the regulations. A principal object of the proviſions made upon this ſubject, in the exiſting regulations, was to diſtinguiſh ſuits, in which the collectors and other public officers might become perſonally anſwerable for any unauthorized deviation from the rules preſcribed for their guidance, in the performance of their reſpective duties; and ſuits for acts done by them, under ſpecial orders, in the regular diſcharge of their official functions, in which no perſonal reſponſibility could attach to them. A further object was to furniſh the Governor General in Council with the earlieſt information of all caſes in which individuals might deem themſelves aggrieved by acts done in purſuance of ſpecial orders from the Governor General in Council, or from the Board of Revenue, or Board of Trade; that redreſs

might

might be granted without a judicial proceſs, if it ſhould appear that any real injury had been ſuſtained; or that the rights of government might be defended, with full information and advice from the proper departments, if the complaint preferred ſhould, on enquiry, be deemed not to have any juſt foundation. From omiſſions of the preſcribed forms however, and in ſome inſtances from miſapprehenſion of the detailed proviſions of the regulations, ſuits have been inſtituted and proſecuted againſt the public officers, as perſonal actions, which ought rather to have been received and reported to government as public ſuits; and on the other hand, the officers complained againſt have ſometimes regarded complaints of their official acts, which, if eſtabliſhed, would render them perſonally reſponſible, to be within the deſcription of ſuits againſt government, which they were not bound to defend individually. It is therefore adviſable, with a view to prevent all poſſibility of doubt in ſuch caſes, that every complaint preferred in the courts of civil juſtice, againſt any European public officer amenable thereto, ſhould be reported, in the firſt inſtance, for the information and orders of the Governor General in Council. It is alſo expedient and requiſite, that proviſion ſhould be made for a ſpecial inquiry, when charges of a ſerious nature are preferred to any of the eſtabliſhed courts of judicature, authorized to receive ſuch charges, againſt any of the covenanted ſervants of the Company, employed in ſituations of truſt and reſponſibility, in the revenue, or commercial department; as well as when any charge or public information of this deſcription may be communicated directly, or through any official channel of communication, to the Governor General in Council. By the Statute 13 Geo. III. Cap. LXIII, Sect. XXXIII, it is enacted, that " if any of his Majeſty's ſubjects in India, employed by, or in the actual ſervice of, the United Company, ſhall be charged with, and proſecuted for, any breach of public truſt, or for embezzlement of public money, or ſtores, or for defrauding the United Company; every

ſuch offender, being convicted thereof in the Supreme Court of Judicature, may be fined and impriſoned, and judged to be forever after incapable of ſerving the United Company." It is further enacted by the Statute 33, Geo. III, Cap. LII, Section LXII; "that the demanding or receiving any ſum of money, or other valuable thing, as a gift or preſent, or under colour thereof, whether it be for the uſe of the party receiving the ſame, or for, or pretended to be for, the uſe of the Company, or of any other perſon whatſoever, by any Britiſh ſubject holding or exerciſing any office or employment under his Majeſty, or the United Company, in the Eaſt Indies, ſhall be deemed and taken to be extortion, and a miſdemeanor at law; and ſhall be proceeded againſt and puniſhed as ſuch, under and by virtue of this act; and the offender ſhall alſo forfeit to the King's Majeſty, his heirs and ſucceſſors, the whole gift or preſent ſo received, or the full value thereof." Theſe proviſions of the Britiſh legiſlature are open to the direct proſecution of the charges therein mentioned before the Supreme Court of Judicature at Calcutta, by any individual who may be deſirous of proſecuting ſuch charges in that court, without the interpoſition of government. But individuals cannot be expected, in all caſes, to proſecute charges of the nature ſpecified (at their own riſk and expenſe) in the Supreme Court at the Preſidency; and when an accuſation is preferred to any of the courts of judicature authorized to receive the ſame, or public information is given to the Governor General in Council, of corruption, embezzlement, or other groſs malverſation, breach of truſt, or high miſdemeanor, by a public officer, it is requiſite for the ends of juſtice, that an immediate inquiry ſhould be inſtituted for the purpoſe of aſcertaining whether ſuch accuſation, or information, be founded or otherwiſe; in order, that in the former caſe, government may be enabled to judge, whether ſuch officer deſerve any longer to be continued in the employment of the Company, and that (in caſes which may appear to require it) the proviſions of

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the law may be carried into effect by a public proſ[illegible] the Supreme Court of Judicature; or if the charge ſh[illegible] to be unfounded, that juſtice may be done to the [illegible] of the accuſed. The following rules are accordingl[illegible] by the Govenor General in Council for the purpoſes [illegible] and are to be conſidered in force, as ſoon as promu[illegible] the whole of the provinces ſubject to the immediate [illegible] of the preſidency of Fort William."

Section II. First proceſs to be obſerved, on the inſtitution of a complaint, in a zillah or city court, againſt a collector, commercial reſident, or other European public officer, amenable thereto; when the act complained of may not come within the ſpecial proviſions of Section IV, of this regulation.

§ II. "WHENEVER a complaint may be inſtituted, in the manner preſcribed by the regulations, in any city or zillah civil court, againſt a collector of the revenue, or a commercial reſident or agent, or a ſalt or opium agent, or a collector of the cuſtoms or other duties, or a mint or aſſay maſter; or againſt any aſſiſtant to ſuch officers reſpectively; or generally againſt any European public officer amenable to a zillah or city court; for any act which, under the regulations in force, may be cognizable by ſuch court, and may not be of the nature deſcribed in Section IV, of this regulation; the judge, previouſly to calling upon the officer complained againſt for his anſwer, ſhall tranſmit a copy and Engliſh tranſlation of the complainant's petition to the Governor General in Council, for his information and orders."

Section III. What proceedings will be held, and orders paſſed, by government, on references made to the Governor General in Council, under the preceding ſection.

§ III. ON receipt of the reference directed in the preceding ſection, the Governor General in Council, after making ſuch inquiry as he may judge neceſſary, through the Board of Revenue, or Board of Trade, or in any other mode which the circumſtances of the caſe may ſuggeſt, will determine, in the event of the redreſs ſued for by the complainant not being granted, whether the ſuit inſtituted ſhall be de[illegible] a public ſuit, by government; or whether it ſhall [illegible] dered a private ſuit, and left to the defence of the [illegible] againſt whom it is brought; or generally what mode of [illegible] ceeding ſhall be adopted with reſpect to the ſuit in [illegible]

The

orders of government, in consequence, shall be immediately communicated to the judge of the court in which the suit may have been instituted; or in which it may be cognizable; and he shall be guided thereby, as far as they may respect the general mode of proceeding to be observed by him under the regulations in force. Provided, that if the Governor General in Council shall order the complaint, so referred, to be tried in a zillah or city court, either as a public suit against government, or as a private suit against the party whose acts are complained of, the whole of the rules in force relative to the trial and decision of such suits, respectively, shall be considered applicable to the trial and decision of the suit in question: in like manner as if no special orders from government had been received.

Section IV. First proceis to be observed on complaints, or charges, of corruption, embezzlement, or other gross fraud, breach of trust, or high misdemeanor.

§ IV. "WHENEVER a complaint, or charge, of corruption, viz. of the corrupt demand or receipt of money, or other valuable thing, as a gift, or present, or under colour thereof, or a charge of embezzlement of public money, or stores, or of any gross fraud upon the Company, or breach of public trust, or other high misdemeanor, such as may appear to come within the provisions of the statutes quoted in the preamble to this regulation; or may be indictable as a misdemeanor in the Supreme Court of Judicature, under any other statute in force; or though not so indictable, may amount to a gross breach of duty or trust, such as, if established, would subject the party to dismission from office; shall be preferred against any of the officers mentioned in Section II, of this regulation, in any zillah, city, or provincial court, authorized by the regulations to receive the same; or before the court of Sudder Dewanny Adawlut; the judge, or judges, of the court receiving such complaint or charge, shall transmit a copy and English translation of the petition of plaint or charge for the information and orders of the Governor General in Council."

"On

§ V. "ON the receipt of any petition tranſmitted to the Governor General in Council under the preceding ſection, as well as in all caſes, when a charge or public information, of the nature therein deſcribed, may be communicated directly to the Governor General in Council, or through the medium of the Board of Revenue, or Board of Trade, or of any other official channel of communication to government; the Governor General in Council will order ſuch general inquiries to be made, as the nature of the caſe may ſuggeſt; either by a reference to the Board of Revenue, or Board of Trade, or to any of the local authorities, or (in caſes in which it ſhall appear to be expedient) by calling upon the perſon accuſed, for an explanation of the charges exhibited againſt him for the purpoſe of aſcertaining whether any grounds exiſt for making a more full and formal inveſtigation into the charges."

Section V. What proceedings will be held, and determination paſſed, by government, on references made to the Governor General in Council, under the foregoing ſection, or when a charge, or public information, of the ſame nature, may be otherwiſe communicated to the Governor General in Council.

§ VI. "WHEN it may appear neceſſary to cauſe a ſpecial inquiry to be made into any charge of the nature of thoſe above deſcribed, the Governor General in Council will appoint a commiſſioner or commiſſioners, who, previouſly to entering upon the performance of the duty committed to him, or them, ſhall take and ſubſcribe the following oath, before ſuch perſon, or court, as the Governor General in Council may direct to adminiſter it."

Section VI. Commiſſioners to be appointed and oath to be taken by them, when a ſpecial inquiry may appear neceſſary.

"I, A. B. appointed a commiſſioner for making a ſpecial inquiry into a certain charge (or charges) exhibited againſt C. D. do hereby ſolemnly ſwear, that I will faithfully and impartially perform the duty committed to me, without fear, favor, or bias, to the beſt of my ability, knowledge, and judgment. So help me God."

§ VII. "THE Governor General in Council will, at the ſame time, order the commiſſion ſo appointed, to be

Section VII. Commiſſion where to be holden.

holden at ſuch place as may appear to be moſt convenient."

Section VIII. Court of Sudder Dewanny Adawlut inveſted with general control over all commiſſions, appointed under this regulation; and empowered to inſtruct the commiſſioners, on all points, not expreſsly provided for by this, or any other regulation.

§ VIII. "THE court of Sudder Dewanny Adawlut is hereby inveſted with a general control over the proceedings of all commiſſions conſtituted under the preſent regulation. The commiſſioners are accordingly to apply to the Sudder Dewanny Adawlut for any inſtructions which they may require in the execution of the duty entruſted to them, for which proviſion may not have been expreſsly made by the preſent, or any other regulation; and the Sudder Dewanny Adawlut is empowered to paſs ſuch orders on the ſubject as may appear to be moſt conſonant to the general principles of equity, and moſt conducive to the purpoſes of ſubſtantial juſtice. Provided however, that if any doubt or difficulty ſhould ariſe in the conduct of ſuch inveſtigations, for which it may appear to the Sudder Dewanny Adawlut to be adviſable to make proviſion by a general regulation, that court ſhall prepare the neceſſary draught of a regulation for the purpoſe, and ſubmit it to the Governor General in Council for his conſideration."

Proviſion for ſubmitting to government any new regulation, which may appear adviſable, in ſuch caſes.

Section IX. In what caſes the Governor General in Council will order the ſuſpenſion from office of the perſon charged with any of the offences ſpecified in Section IV.

§ IX. "WHENEVER a ſpecial commiſſion may be appointed under the proviſions of this regulation, for the inveſtigation of charges exhibited againſt a public officer, ſuch officer ſhall be ſuſpended from the diſcharge of the functions of his ſtation, and from the receipt of the ſalary and allowances attached to it. But if the charge be found, on inquiry, to have no foundation, the Governor General in Council, on reſtoring the ſuſpended officer to the exerciſe of the functions of his ſtation, will order payment of the whole of his ſalary and allowances, from the date of his ſuſpenſion; in like manner as if it had never taken place."

Section X. By whom the proſecution is to be conducted, when a

§ X. "WHENEVER a commiſſion may be inſtituted under the proviſions of the preſent regulation, for the inveſtigation

of

of charges exhibited againſt a public officer, the Governor General in Council will determine, whether the conduct of the proſecution ſhall be left to the accuſer; or be undertaken on the part of government. In the latter caſe, it ſhall be the duty of the Board of Revenue, or the Board of Trade, (according as the perſon accuſed may be attached to the revenue or commercial department) to digeſt and prepare the charges from the papers which may be tranſmitted to them for that purpoſe by the Governor General in Council, and from any further information obtainable from the accuſer, or from any other ſource; to bring the evidence in ſupport of the accuſation in due order before the commiſſioners; and generally to conduct the proceedings on the part of the proſecution, through the channel of the regiſter of the zillah or city court, in which the commiſſion may be aſſembled; whoſe duty it ſhall be, on all occaſions of the above nature, to conduct the proſecution before the commiſſioners on the part and under the orders and guidance of the Board of Revenue, or the Board of Trade, and with the aid of the vakeel of government. The perſon, or perſons, by whom the charges or information ſhall have been exhibited, may alſo be examined upon oath, on the part of the proſecution."

commiſſion may be inſtituted, under this regulation.

Perſons by whom the charges, or information, have been exhibited, may be examined on oath, for the proſecution.

§ XI. "UNDER the proviſions contained in the preceding ſection, the perſon, by whom the information or accuſation may have been originally lodged, will of courſe be at liberty to communicate in writing with the Board of Revenue, or Board of Trade; or perſonally with the officer appointed to conduct the proſecution on the ſpot; as circumſtances may from time to time require."

Section XI. The perſon by whom the information may have been originally lodged, at liberty to communicate in writing with the Board of Revenue, or Board of Trade, or perſonally with the officer conducting the proſecution.

§ XII. "IT ſhall be the general duty of commiſſioners appointed under this regulation, after receiving the plaint or charge, and the documents from which the ſame may have been prepared, to call upon the perſon accuſed for his reply

Section XII. General duty of the commiſſioners appointed under this regulation.

to

to the accuſation; to examine upon oath the witneſſes named by the accuſer, or the accuſed, as having knowledge of any facts relative to the charges, or defence; to receive any further written documents offered in ſupport of, or againſt the accuſation; and to call for and take any further requiſite evidence which may be indicated by the witneſſes adduced, or documents exhibited, by either party; and may appear to be neceſſary for the aſcertainment of facts; or the diſcovery of the truth or falſehood of the charge; or of any part thereof."

Section XIII. Powers veſted in a commiſſion, conſtituted under this regulation.

§ XIII. "For the diſcharge of the duties ſpecified in the preceding ſection, or any other functions which may be delegated to a commiſſion conſtituted under this regulation, it ſhall be veſted with the ſame powers as are exerciſed by a court of zillah or city dewanny adawlut; except that all proceſs to cauſe the attendance of witneſſes, or other compulſory proceſs, ſhall be ſerved through, and executed by, the zillah or city court, in the juriſdiction of which the commiſſion may be held; or in which the witneſs, or other perſon upon whom the proceſs is to be ſerved, may reſide. In the rejection of inadmiſſible evidence, in the excluſion of irrelevant and ſuperfluous matter, and in other queſtions affecting the regularity and fairneſs of the inveſtigation, as well as in preventing unneceſſary delays and impediments, the commiſſioners are to be governed by the rules and maxims of juſtice; and in all points, not expreſsly provided for by this regulation, the proviſions contained in the general regulations are to be obſerved, as far as they may appear conſiſtent and applicable."

By whom proceſs for attendance of witneſſes, and other compulſory proceſs, to be ſerved and executed.

By what rules and maxims of juſtice, the commiſſioners to be guided, in queſtions affecting the regularity and fairneſs of their inveſtigation; and in preventing delays and impediments.

Proviſions of the general regulations to be obſerved, as far as applicable, in all points not expreſsly provided for by this regulation.

Section XIV. The perſon accuſed, as well as the accuſer, or proſecutor, may record any requiſite obſervations, upon the cloſe of the evidence before the commiſſion.

§ XIV. "On the cloſe of the evidence in ſupport of the proſecution, and in defence of the accuſed, before the commiſſion, it ſhall be at the option of the party accuſed to record any obſervations upon the reſult of the inquiry, which he may think neceſſary for the vindication of his conduct and character.

character. The accuſer, or the Board of Revenue, or the Board of Trade, in caſes in which the proſecution may be conducted on the part of government, ſhall alſo be at liberty to record any remarks on the ſubject of the proſecution which may be deemed requiſite, for the information of the court of Sudder Dewanny Adawlut, and of the Governor General in Council."

Section XV. Proceedings to be tranſmitted, and report made, to the court of Sudder Dewanny Adawlut, when the inquiry of the commiſſioners is concluded.

§ XV. WHEN the proceedings of the commiſſion ſhall have been concluded, or as ſoon afterwards as circumſtances may admit, the commiſſioner or commiſſioners, ſhall tranſmit to the Sudder Dewanny Adawlut the whole of the proceedings held, and documents received (accompanied with tranſlations of papers not in the Engliſh language) together with a ſummary of the pleadings and evidence, and his or their opinion on the merits of the caſe."

Section XVI. Report and documents to be ſubmitted to the Governor General in Council, by the Sudder Dewanny Adawlut, with the opinion of that court upon the proof of the facts charged.

§ XVI. "THE judges of the Sudder Dewanny Adawlut, after duly conſidering the proceedings and report tranſmitted to them under the preceding ſection, and after calling for any further evidence which may appear to them attainable and requiſite, ſhall ſubmit the whole of the proceedings and documents received by them to the Governor General in Council; with their opinion, whether any and what facts charged againſt the party accuſed, appear to have been eſtabliſhed."

Section XVII. Final orders to be then paſſed by government.

§ XVII. "THE Governor General in Council, on conſideration of the report and proceedings ſubmitted to him, in purſuance of the foregoing ſection, will paſs ſuch final orders as may appear to him juſt and proper; and in the event of his deeming it neceſſary that the party accuſed ſhould be brought to trial, by a public proſecution, in the Supreme Court of Judicature, will iſſue the neceſſary inſtructions for that purpoſe to the law officers of government."

And when neceſſary, inſtructions will be iſſued to the law officers of government, for a public proſecution in the Supreme Court.

Section XVIII. In what cases false accusers, or informers, will be liable to prosecution for damages.

§ XVIII. "SHOULD the result of any special inquiry, instituted under the provisions of this regulation, shew the charge or information, upon which it may have been ordered, to be altogether without foundation; and more especially if it should appear to have originated in any calumnious or malicious motive; the false accuser or informer, will be liable to prosecution for damages, in any court to which he may be amenable, at the suit of the person against whom the charge or complaint may have been preferred. The Governor General in Council further reserves to himself a power of directing, in any particular case, which may appear to require it, that the expence attending the inquiry, made upon a charge, clearly shewn to be false and unfounded, and evidently known to be such by the accuser, at the time of his accusation, shall be defrayed by him, and recovered under the orders of the court of Sudder Dewanny Adawlut, by the ordinary process for enforcing a judgment of that court."

And power reserved to government, of ordering, in any particular case that may require it, the expence of the inquiry made, to be defrayed by the false accuser.

Section XIX. General explanation of the provisions in this regulation, as not restricting public, or private, prosecutions in the supreme court, at all times, in the mode prescribed by law.

§. XIX. "NOTHING in the present regulation shall be construed to preclude the Governor General in Council from ordering a public prosecution, in the Supreme Court of Judicature, whenever it may appear to him expedient, without making the special inquiry herein provided for. Nor will any resolution or orders, which the Governor General in Council may pass under this regulation, prevent individuals from having recourse, at all times, to the Supreme Court; in the mode prescribed by law."

Grounds of Regulation I, 1807, "for defining the duties to be performed, and powers exercised, by single judge of the provincial courts of appeal, in the absence of the other judges."

No provision having been made in the regulations for the ceded and conquered provinces, to define the duties which devolve upon a single judge of a provincial court of appeal remaining at the station where the court is held during the absence of the other judges, and the provisions made for this purpose in the provinces of Bengal, Behar and Orissa, by Section XII, Regulation VII, 1794, (extended to Benares by Section

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tion XV, Regulation XVI, 1795,) having been found to require explanation and amendment, the following rules were enacted by Regulation I, 1807, for this purpoſe; as well as to provide for the caſe of one only of the judges of a provincial court, who may be preſent at the ſtation where the court is held, being able to attend the ſittings of the court from indiſpoſition of the other judge, or judges, or from any other cauſe."

Section III. What duties to be performed by the officiating judge of a provincial court, when one judge only can attend the ſitting of the court.

§ III. "WHENEVER one judge only of a provincial court of appeal may be preſent at the ſtation where the court is held, or though two or more judges may be preſent at the ſtation, if one judge only ſhall be able to attend on the days fixed for the ſittings of the court, which, under the regulations now in force, are to be held three days in every week, or oftener if the buſineſs ſhall require it, the officiating judge, ſo attending the court, is authorized and directed to perform the duties ſpecified in the following ſection,"

Section IV. Specification of duties to be ſo performed.

§ IV. *Firſt.* To execute all decrees, precepts and orders of the Sudder Dewanny Adawlut, and make returns in the preſcribed form in all caſes of reference from that court; alſo to receive petitions of appeal to the Sudder Dewanny Adawlut from the deciſions of the provincial court, which may be duly preſented within the fixed period; and to proceed thereupon as directed by the regulations.

"*Secondly.* To execute all decrees and orders which may have been paſſed by two or more judges of the provincial court, and which ſhall not have been carried into full execution; provided that this authority be not conſtrued to empower any ſingle judge to perfect interlocutory decrees, by paſſing a final judgment or order upon any point left undetermined by the deciſion of a competent provincial court, or generally to give any determination upon the rights of parties, which may

not

not have been expreſsly adjudged at a regular ſitting of the provincial court."

"*Thirdly.* To receive petitions of appeal from deciſions of the zillah and city courts, whether tranſmitted by the judges of thoſe courts, or preſented, as allowed in particular caſes by the regulations, immediately to the provincial court; and if the appeal ſhall clearly appear to be admiſſible under the preſcribed limitations, and the petition for it ſhall have been duly preſented within the fixed period, to admit the appeal, and iſſue all conſequent proceſs for the appearance of the reſpondent, as well as for obtaining the proceedings held upon the cauſe appealed. But if the petition of appeal ſhall not have been preſented within the limited period; or, although ſo preſented, if there appear to be any room for doubt whether the cauſe be regularly appealable to the provincial court, or if the petition be for a ſpecial appeal, in caſes where a regular appeal is not open to the provincial court, the admiſſion or rejection of the appeal ſhall be left for the conſideration of a competent court; and the ſingle judge, receiving the petition, ſhall merely record the receipt of it, and of the inſtitution fee and ſecurities required to accompany it, which ſhall be returned in the event of the appeals, not being ultimately allowed by the provincial court."

"*Fourthly.* To aſcertain and determine the ſufficiency of ſecurities offered for the admiſſion of appeals, or for the fees of pleaders; or for ſtaying the execution of decrees appealed from; to ſummon and examine witneſſes for proving vukalutnamahs, or mokhtarnamahs; or for eſtabliſhing the property of paupers; and to prepare appealed cauſes for trial, by receiving the pleadings of the parties, or their vakeels, and any exhibits, which may accompany them."

"*Fifthly.* To ſummon and examine any witneſſes upon the merits

merits of the caſe in appeal, whom the provincial court may have previouſly ordered to be examined: or whoſe evidence may be offered upon points in which the provincial court may have reſolved to admit new evidence on a previous hearing of the appeal. But this authority ſhall not be conſidered to empower any ſingle judge to ſummon or examine witneſſes, upon any point relative to the merits of a cauſe in appeal, unleſs two or more judges of the provincial court ſhall have directed the examination of ſuch witneſſes; or have reſolved to admit new evidence on the point or points, in proof of which ſuch witneſſes may be adduced."

"*Sixthly.* To proceed in cauſes referred for trial in the firſt inſtance to the provincial court, by the Governor General in Council, or by the Sudder Dewanny Adawlut, in likemanner as ſtated in the foregoing clauſes reſpecting appeals, and under the ſame reſtrictions."

"*Seventhly.* To receive miſcellaneous petitions relative to matters depending before, or decided by, any zillah or city court; in all caſes wherein the provincial courts are authorized to receive ſuch petitions; and to proceed thereupon as the provincial courts are empowered to proceed; except that no final order ſhall be paſſed upon the ſubject of any ſuch petition, until two or more judges be preſent; nor ſhall a ſingle judge of the provincial court be deemed competent to paſs a final and concluſive order in any caſe whatever."

"*Eighthly.* To correſpond with the Governor General in Council, with the Sudder Dewanny Adawlut, with the other provincial courts of appeal, with the zillah and city courts, and generally with all public officers, in likemanner as the provincial courts are authorized to correſpond with ſuch public officers; and to perform all miſcellaneous duties, ariſing out of ſuch correſpondence, or incident to the neceſſary

 diſcharge

diſcharge of the uſual functions of an officiating judge of a provincial court of appeal. Alſo to furniſh the monthly and other periodical reports and accounts preſcribed by the regulations; or required by the orders of Government, or of the court of Sudder Dewanny Adawlut."

Section V. Powers veſted in the officiating judge of a provincial court, for execution of duties ſtated in preceding Section.

§ V. "In the execution of the duties preſcribed by the preceding ſection, a ſingle judge of a provincial court or an acting judge appointed to officiate as ſuch, when none of the judges of a provincial court may be preſent at the ſtation where the court is held, ſhall poſſeſs the ſame powers as are veſted by the regulations in the court collectively, ſubject to the ſeveral reſtrictions ſpecified, and alſo to the further reſtriction noticed in the following ſection."

Section VI. Reſtriction in commitment of witneſſes to be tried for perjury.

§ VI. "In the event of any witneſs, who may be examined by a ſingle judge of a provincial court, or by a perſon appointed to officiate as ſuch, or by the regiſter of the provincial court acting under the orders of a ſingle judge, appearing to be guilty of perjury, ſo as to merit commitment for trial before the court of circuit, in purſuance of the proviſions made by the regulations for that purpoſe; the judge may cauſe ſuch witneſs to be held to bail, or if ſatisfactory bail be not given for his appearance at the firſt regular ſitting of the provincial court, may cauſe him to be kept in cuſtody until he can be brought before two or more judges of the provincial court; but ſhall not paſs a final order, to commit the witneſs for trial on a charge of perjury, until the grounds of it ſhall have been ſubmitted for the determination of a competent court."

Section VII. Two, or more judges, of a provincial court, may re-examine witneſſes, or examine other witneſſes, or paſs

§. VII. "The powers veſted by this regulation in a ſingle judge of a provincial court of appeal ſhall not be conſtrued to prevent the court at large, or any two judges of the court, from re-examining witneſſes whoſe depoſitions may have

have been taken before a ſingle judge, if it appear requiſite; or from examining any other witneſſes in the cauſe; or generally from paſſing any order that may appear proper, and conſiſtent with the regulations, whether in addition to, or in qualification or abrogation of, any previous order of a ſingle judge."

any order conſiſtent with the regulations, notwithſtanding previous orders of a ſingle judge.

THE ſucceſſive alterations made in the conſtitution of the courts of Sudder Dewanny Adawlut and Nizamut Adawlut, by Regulations X, 1805, and XV, 1807, have been already mentioned.* The only further proviſion, immediately connected with the powers of the Sudder Dewanny Adawlut, which has not been ſpecified, is contained in Section X, Regulation I, 1806, whereby that court is "empowered to authorize and direct an occaſional diſpenſation with the rule for periodical vacations of the provincial zillah, and city courts, contained in Section II, Regulation III, 1798, and Section XIII, Regulation VIII, 1805, in the inſtance of any particular court, wherein, from the arrear of buſineſs, or other cauſe, it may appear expedient that the vacations thereby provided for, or either of them, ſhould not take place.† It may be proper however to notice that the Second Clauſe of Section VII, Regulation VIII, 1805, which enacts that "the limitation for appeals to the Sudder Dewanny Adawlut, in the caſes of reſiſtance of proceſs provided for by Sections XXIII, XXV, and XXVI, Regulation III, 1803, ſhall be any amount exceeding five thouſand ſicca rupees, as provided, in ſimilar caſes by Sections XXIII, XXV, and XXVI, Regulation IV, 1803," has corrected an overſight in the ſtandard for appeals to the Sudder Dewanny Adawlut, in caſes

Alterations in the conſtitution of the Sudder Dewanny Adawlut and Nizamu Adawlut already noticed.

R. I. 1806. § X. Court of Sudder Dewanny Adawlut empowered to direct a diſpenſation with the rule for annual vacations, in particular inſtances, when it may appear expedient.

C. P. R. VIII, 1805. § VII. Cl. 2. Overſight corrected in ſtandard of appeals to Sudder Dewanny Adawlut, in caſes of reſiſtance to civil proceſs, in the ceded provinces.

* In Pages 483 and 484.

† Section XIII, Regulation VIII, 1805, extends to the ceded and conquered provinces, the rule for annual vacations of the civil courts, at the periods of the *Daſſarah* and *Moharrum* holidays, eſtabliſhed for the other provinces by Section II, Regulation III, 1798; and cited in page 173, of this work.

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of reſiſtance to civil proceſs; which was pointed out in a note to page 84 of this Analyſis.

C. P. R. VIII, 1805. § XXVII. C. 2. A defect ſupplied reſpecting exemption of ſummary ſuits from the inſtitution fee, in ceded provinces.

THE Second Clauſe of Section XXVII, Regulation VIII, 1805, has alſo ſupplied a defect in Regulation XLIII, 1803, "for eſtabliſhing fees on the inſtitution and trial of ſuits," in the ceded provinces, by providing that "no inſtitution fee ſhall be levied on ſuits inſtituted in the zillah courts under Regulation XXXII, 1803, (for preventing affrays;) nor on any ſuits whatever, in which the zillah courts, or the provincial courts of appeal, or the Sudder Dewanny Adawlut, may be empowered by the regulations to paſs judgment on a ſummary proceſs." *

R. XII, 1808. Rules enacted for the temporary adminiſtration of civil juſtice at Serampore.

REGULATION XII, 1808, "to provide for the adminiſtration of civil and criminal juſtice at Serampore," has been already noticed. † And the proviſions in it which relate to the adminiſtration of criminal juſtice, and the police, have been ſtated at length. The following ſections of this regulation con-

* But an inaccuracy in the Third Clauſe of Section IV, Regulation XLIII, 1803, which directs the inſtitution fee, in ſuits for malgoozary land, in the ceded provinces, to be levied "on the amount of the annual *jumma* payable from the land to government," inſtead of the annual *produce* of the land, as made the ſtandard in the other provinces by Section VIII, Regulation V, 1798, is ſtill unrectified; as well as a ſimilar miſtake in Section V, Regulation XLIII, 1803, with reſpect to the exhibit fee in ſuits for malguzary land, "the annual *jumma* payable from which to government ſhall not exceed two hundred ſicca rupees." The proviſions in ſection XIII, and the ſucceeding ſections of Regulation XLIII, 1803, for the uſe of ſtampt paper in the ceded provinces, being reſtricted to pleadings in, or miſcellaneous applications to, the civil courts; applications for the regiſtry of deeds; copies of deeds furniſhed by the regiſters; copies of decrees of the civil courts; copies of papers furniſhed by the civil courts; ſunnuds to cauzies and vakeels; copies of proceedings in cauſes appealed to the King in Council; and foujdary complaints of petty offences; the declaration of the court of Sudder Dewanny Adawlut, on the 14th Auguſt 1801, (which was noticed in page 159) concerning the receipts of pleaders for their fees, Vakalutnamahs, Moktarnamahs, ſecurity bonds, Ikrarnamahs and Razeenamahs, as coming within the proviſions for "money papers" and "law papers," in Sections IV, and V, Regulation VII, 1800, muſt not be conſidered applicable to the ceded and conquered provinces.

† In pages 507, 508.

contain

tain the rules enacted for civil juſtice, which are to remain in force whilſt the ſettlement of Serampore ſhall continue under the Britiſh Government.

Section II. Two courts, European and Native.

§ II. "For the adminiſtration of civil and criminal juſtice to the European and native inhabitants of Serampore, there ſhall, as heretofore, be two ſeparate and independent courts; to be denominated, reſpectively, the European court, and the cutcherry or native court."

Section III. Conſtitution and officers of European court.

§ III. "The European court ſhall be compoſed of a judge and magiſtrate; and of a recorder, or regiſter; to be appointed to their reſpective offices by the Governor General in Council; and to be removable therefrom by his order only. Two European or Portugueſe officers ſhall alſo be attached to the court, whoſe duty it ſhall be, as heretofore, to atteſt the proceedings of the court; and to verify them, when required, on oath. The requiſite eſtabliſhment of native officers ſhall alſo be attached to the court."

Section IV. And of native court.

§ IV. "The cutcherry, or native court, ſhall conſiſt of a judge and magiſtrate, with an eſtabliſhment of native officers. The judge and magiſtrate to be appointed by the Governor General in Council, and to be removable by his order only."

Section V. What ſuits cognizable by the European court.

§ V. "The European court, in its civil juriſdiction, ſhall take cognizance of all ſuits of a civil nature, between Europeans, the deſcendants of Europeans, and the deſcription of native Chriſtians commonly called Portugueſe; or in which the defendant may be an European, the deſcendant of an European, or native Chriſtian of the deſcription above mentioned; provided, in all caſes, that the parties ſued be ſubject to the local juriſdiction of the court. With the exception ſtated in the following Section, the court ſhall be guided, in its pro-

By what laws, rules, and uſages, the court is to be guided.

ceedings and deciſions, by the laws, rules, and uſages which were in force at Serampore, at the time of its coming into the poſſeſſion of the Britiſh government. When the judge ſhall found his deciſion upon any law of Denmark, or upon any particular local rule or uſage, he ſhall ſpecify the ſame in his decree. All petitions and pleadings of the parties may be written at their option, in the Daniſh or Engliſh language; but in caſes appealed to the commiſſioner, as hereafter provided, an Engliſh tranſlation of all papers in the Daniſh language ſhall be made at the expenſe of the appellant (to be reimburſed by the reſpondent, if the judgment on the appeal be given in favor of the appellant), and ſhall be authenticated by the judge or regiſter. And in all caſes the proceedings, orders, and judgments of the court, ſhall be recorded in both the Daniſh and Engliſh languages."

And when to be ſpecified in the decree.

In what language petitions and pleadings to be written.

Tranſlation to be made in appealed caſes.

Proceedings, orders, and judgments of the court to be recorded in Daniſh and Engliſh languages.

Section VI. Protections of the Daniſh government not to exempt perſons from being ſued in courts at Serampore, hereafter.

But in certain caſes to have a retroſpective operation in preventing perſonal impriſonment.

§ VI. "Protections and exemptions from ſuits granted by the Daniſh government, to perſons who had taken refuge at Serampore, ſhall no longer have effect, in exempting ſuch perſons from being ſued in the courts of Serampore, provided they are otherwiſe amenable to their juriſdiction. But in the event of a judgment being paſſed againſt any perſon who had received a protection from the Daniſh government, in reſpect of any ſum of money or value due before the capture of Serampore, the judgment ſhall be executed by attachment and ſale of the property of the defendant only, and not by impriſonment of his perſon; unleſs it ſhall clearly appear that he has been guilty of fraud toward his creditor, and has concealed or clandeſtinely diſpoſed of property, which ought, in juſtice, to have been appropriated to the diſcharge of his debt; in which caſe, it ſhall be at the diſcretion of the court, on application from the plaintiff, and on his undertaking to pay the uſual ſubſiſtence to the defendant, during his impriſonment, to confine the latter until the judgment paſſed againſt him be ſatisfied."

§ VII.

§ VII. "*First.* The judgments of the European court ſhall be final to an amount or value not exceeding one hundred and fifty ſicca rupees. Provided, however, it ſhall be competent to the commiſſioner at Serampore to admit a ſpecial appeal from any decree of the European court, which, on the face of it, may appear to be erroneous or unjuſt, or which from the nature of the caſe ſhall appear to be of ſufficient importance to merit a further inveſtigation in appeal, although within the amount ſpecified in this clauſe."

Section VII. In what ſuits the judgment of the European court to be final; except in caſes appearing to require a ſpecial appeal.

"*Second.* From all judgments and orders paſſed by the European court for an amount or value exceeding one hundred and fifty ſicca rupees, an appeal ſhall lie to the commiſſioner at Serampore; provided, that the petition of appeal be preferred within three months after the judgment, or order, appealed from, ſhall have been paſſed; or if not preferred within this period, that ſufficient reaſon for the delay be aſſigned to the ſatisfaction of the commiſſioner."

In what ſuits an appeal lies to the commiſſioner at Serampore.

Limitation of period for appeals.

§. VIII. "The cutcherry or native court, in its civil juriſdiction, ſhall have cognizance of all cauſes of a civil nature between native parties, or in which a native of India (not of the deſcription of native Chriſtians mentioned in Section V,) may be the defendant; provided, that the parties ſued be ſubject to the local juriſdiction of the court. With the exception ſtated in Section VI, (which is hereby declared equally applicable to the native and European courts) the court ſhall be guided in its proceedings and deciſions by the laws, rules, and uſages which were in force at Serampore, when it came into the poſſeſſion of the Britiſh Government. When the judge ſhall found his deciſion upon any particular law, rule, or uſage, he ſhall ſpecify the ſame in his decree. All petitions and pleadings of the parties, as well as all proceedings and orders of the court, ſhall be in the Bengal or Perſian language."

Section VIII. What ſuits cognizable in the native court.

By what laws, rules, and uſages, this court to be guided.

And when to ſpecify the ſame in the decree.

In what language petitions and pleadings, proceedings and orders to be written.

§ IX.

Section IX. Judgments of native court in what ſuits final; unleſs a ſpecial appeal be admitted.

§ IX. "*Firſt.* THE judgments of the native court ſhall be final to an amount or value not exceeding fifty ſicca rupees. Provided however, that it ſhall be competent to the commiſſioner at Serampore to admit a ſpecial appeal from any decree of the native court, which, on the face of it, may appear erroneous or unjuſt; or which from the nature of the caſe ſhall appear to be of ſufficient importance to merit a further inveſtigation in appeal, although within the amount ſpecified in this clauſe."

From what judgments an appeal lies to the commiſſioner.

"*Second.* FROM all judgments and orders paſſed by the native court, for an amount or value exceeding fifty ſicca rupees, an appeal ſhall lie to the commiſſioner at Serampore; provided that the petition of appeal be preferred within three months after the judgment, or order, appealed from, ſhall have been paſſed; or if not preferred within this period, that ſufficient reaſon for the delay be aſſigned to the ſatisfaction of the commiſſioner."

Limitation of time for appeals.

Section X. In what caſes an appeal from the commiſſioner's judgment is open to the Sudder Dewanny Adawlut.

§ X. "*Firſt.* IN all caſes of a civil nature, heard and determined by the commiſſioner at Serampore, whether in appeal from the European court, or from the native court, a further appeal ſhall lie from the judgment, or order, of the commiſſioner, to the court of Sudder Dewanny Adawlut eſtabliſhed at Calcutta; provided that the amount or value adjudged againſt the party deſiring to appeal, ſhall exceed the ſum of five thouſand ſicca rupees; and that the petition of appeal be preferred within three months after the decree or order appealed from, ſhall have been paſſed; or if not preferred within this period, that ſufficient reaſon for the delay be aſſigned to the ſatisfaction of the court of Sudder Dewanny Adawlut."

Time limited for ſuch appeals.

Further proviſion for ſpecial appeals to the Sudder Dewanny Adawlut.

"*Second.* IT ſhall further be competent to the court of Sudder Dewanny Adawlut to admit a ſpecial appeal from any judgment

judgment or order paſſed by the commiſſioner at Serampore, although the amount or value adjudged may be leſs than five thouſand ſicca rupees; if, on the face of the decree or order, it ſhall appear erroneous or unjuſt; or if, from the nature of the caſe, as ſtated in the decree, or order, it ſhall appear of ſufficient importance to merit a further inveſtigation in appeal, although within the amount ſpecified in the preceding clauſe."

Section XI. How far the proviſions ſtated for appeals to the commiſſioner at Serampore and to the Sudder Dewanny Adawlut, are to have a retroſpective operation.

§ XI. "THE proviſions contained in this regulation for an appeal to the commiſſioner at Serampore, from deciſions paſſed by the European and native civil courts at that ſettlement, and for a further appeal from the deciſions of the commiſſioner to the court of Sudder Dewanny Adawlut, ſhall have a retroſpective operation, with reſpect to all deciſions in civil cauſes paſſed by the European and native courts, and by the commiſſioner, ſince the ſettlement of Serampore has been ſubject to the authority of the Britiſh Government. But nothing in this regulation ſhall be underſtood to authorize an appeal in caſes determined by the courts eſtabliſhed at Serampore, before its ſubjection to the Britiſh authority; without ſpecial cauſe aſſigned to the ſatisfaction of the court of Sudder Dewany Adawlut; which court is empowered to admit ſuch appeals, in particular caſes, if it appear neceſſary for the ends of juſtice; but this diſcretionary power is to be exerciſed with caution; and the appeal is not to be allowed in any caſe without ſatisfactory reaſon for its not having been before brought forward."

Section XII. Parts of Regulation I, 1805, declared applicable to appeals from the judgments of the commiſſioner at Serampore to the Sudder Dewanny Adawlut; and to general authority of that court over the civil courts at Serampore.

XII. "*Firſt.* THE proviſions contained in Sections IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII, Regulation I, 1805, relative to appeals to the court of Sudder Dewanny Adawlut, from the deciſions of the courts of civil juſtice eſtabliſhed at Chandernagore and Chinſurah, and to the general authority of the Sudder Dewanny Adawlut over thoſe courts, ſhall be conſidered applicable to all caſes of appeal to the

court of Sudder Dewanny Adawlut from the judgments and orders of the commiſſioner at Serampore, as well as to the general authority of the Sudder Dewanny Adawlut over the courts of juſtice eſtabliſhed at Serampore."

Commiſſioner at Serampore may frame rules of practice; and preſcribe obſervance of them to the courts at Serampore, after obtaining approbation of Sudder Dewanny Adawlut.

"*Second.* It ſhall further be competent to the commiſſioner at Serampore to frame ſuch rules of practice as may be found moſt convenient for carrying into full effect the ſeveral proviſions of this regulation; and after obtaining the approbation of the Sudder Dewanny Adawlut thereto, to preſcribe an obſervance of the ſame to the European and native courts at Serampore."

Proviſions of Regulation I, 1805, for appeals from civil courts at Chandernagore and Chinſurah, already ſtated.

The proviſions of Regulation I, 1805, "for empowering the court of Sudder Dewanny Adawlut to hear and determine appeals from the deciſions of the courts of civil juſtice, eſtabliſhed under the authority of the Britiſh Government, at Chandernagore and Chinſurah," were generally ſtated in the firſt part of this Analyſis.* The civil laws of France, which were in force at Chandernagore before the capture of that ſettlement, and which were continued, under the regulation above mentioned, having extended the period of minority to the age of five and twenty years; whilſt by the law now eſtabliſhed in France, and throughout the French colonies, that period is limited to twenty one years; with a view to obviate this difference between the French inhabitants at Chandernagore, and their kindred in France, or in the French colonies, as well as to provide for other defects in the law and uſage at Chandernagore, relative to the guardianſhip of minors, and employment of their property, the following rules were eſtabliſhed for that ſettlement by Regulation II, 1808.

Further proviſion made by Regulation II, 1808, "for the better ſecurity of the property of minors ſubject to the juriſdiction of the European court at Chandernagore."

Section II. Fixed period of majority.

§. II. "The period of majority for Europeans, deſcendants of Europeans, and other perſons, hitherto ſubject to the

* See pages 139 to 141.

civil

civil laws of France at Chandernagore, is, for the future, fixed at the age of one and twenty years."

Section III. Annual account to be delivered by guardians.

§ III. "ALL guardians (not parents) already appointed, and to be hereafter appointed, ſhall deliver in their accounts to the European court of juſtice at Chandernagore, once a year; namely, on the 1ſt of July, adjuſted to the 30th of April preceding; ſpecifying the whole amount of their receipts and diſburſements on account of their wards, the balance in their hands, and the manner in which they have diſpoſed of that balance."

Section IV. In what caſe the guardian may be called upon for his account at any ſhorter period.

§ IV. "UPON an application made on behalf of a minor, and after the circumſtances ſtated in that application ſhall have been duly verified, the court of juſtice at Chandernagore ſhall be competent to call upon a guardian for his account at any ſhorter period."

Section V Reſtriction on the ſale of immovable property.

§ V. "IMMOVABLE property now belonging, or which may in future belong, to minors, ſhall not be ſold without the ſanction of the court, or ſpecial directions in the will by which ſuch property may be bequeathed. Capital engaged in trade or manufacture, or inveſted in good mortgages, which may at preſent belong, or which may in future be left, or come, to minors, ſhall continue to be ſo applied or inveſted, ſo long as the guardians, with the approbation of the court, ſhall deem ſuch application or inveſtment advantageous to the minors; but no guardian ſhall, without the permiſſion of the court, engage the property of his ward in trade or manufacture; or diſpoſe of it otherwiſe than in the purchaſe of public ſecurities bearing intereſt; which ſhall be depoſited as ſoon as purchaſed in the public treaſury: and all balances of caſh in the hands of guardians ſhall, as often as poſſible, be veſted in the purchaſe of ſuch ſecurities."

Rule for the employment of money in the hands of guardians.

§. VI.

Section VI. Accounts of guardians delivered to the court not concluſive. Always open to reviſion, and impeachment.

§ VI. "THE periodical ſtatements of accounts in the court of juſtice ſhall not be concluſive. The accounts of guardians, till the final ſettlement of them, according to the laws of France, ſhall always be open to reviſion and impeachment, upon proof of any error, or fraud."

Section VII. Above rules not applicable to guardians appointed to children by their fathers, under a will duly made.

Fathers authorized to make ſuch appointments.

And guardians ſo appointed, not to be called to account, unleſs reaſonable ground appear.

But liable to make good loſs to their wards, and to be removed, on proof of groſs malverſation.

§ VII. "THE above rules ſhall not be conſidered applicable to guardians appointed by a father to his children by his laſt will, duly made before a notary, or according to any other form which is required by the law now in uſe at Chandernagore, as eſſential to the validity of a will. Power is hereby given to fathers to make ſuch appointments by will; guardians ſo appointed ſhall not be called to account during their adminiſtration, unleſs a complaint be preferred on behalf of the minor, and reaſonable ground be made to appear to the court; but in caſe of groſs malverſation eſtabliſhed againſt them, they ſhall not only be liable to make good any loſs to their wards, but may be removed from their offices by a decree of the court."

SECTION III.

Provisions in R. XV, 1793, for fixing the rate of interest on loans, before noticed.

THE provisions contained in Regulation XV, 1793, "for fixing the rates of interest on past and future loans" in Bengal, Bahar, and Orissa, were stated at length in a former part of this Analysis; * with a remark, that this regulation had not been extended to the province of Benares: though Regulation I, 1798, "to prevent fraud and injustice in conditional sales of land, under deeds of *Bye-bil-wuffa*, or other deeds of the same nature," had been declared to extend to that province. Regulation XVII, 1806, has since been enacted for extending to the province of Benares the rates of interest, on future loans, and provisions relative thereto, contained in Regulation XV, 1793;" as well as, "for a general extension (in all the provinces under the presidency of Fort William,) of the period fixed by Regulations I, 1798, and XXXIV, 1803, for the redemption of mortgages, and conditional sales of land, under deeds of *Bye-bil-wuffa*, *Kut-cubaleh*, or other similar designation." The justice and expediency of a legal provision, for the latter purpose, were suggested in a note to page 193 of this work. And in the preamble to Regulation XVII, 1806, it is stated to be "requisite, for the purpose of preventing improvident and injurious transfers of landed property, at an inadequate price, by the forfeiture of mortgages accompanied with a condition of sale to the mortgagee, if the amount advanced be not repaid within a stated period, (which description of mortgage is common throughout the country, under deeds of bye-bil-wuffa, kut-cubaleh, and other similar designations,) that an equitable provision should be made for allowing a redemption of the estate within a reasonable limited period, on payment

Extended to the province of Benares by R. XVII, 1806.

With general extension, in all the provinces, of period for redemption of mortgages, with conditional sales of land.

Reasons for this measure stated in preamble to Regulation XVII, 1806.

* See Pages 185 to 188.

of the principal ſum lent; with intereſt thereupon if the mortgagee ſhall not have been put in poſſeſſion." The rules enacted for this purpoſe, and for extending the proviſions of Regulation XV, 1793, with modifications, to the province of Benares, are, as follow.

Rules enacted for purpoſes ſtated.

Section II. Proviſions of Regulation XV, 1793, extended to Benares, with modifications.

§ II. "THE proviſions contained in the ſeveral ſections of Regulation XV, 1793, are hereby declared to extend to the province of Benares, from the commencement of the enſuing year 1807, A. C. correſponding with the 19th Pooſe of the Bengal year 1213, and 7th Pooſe of the Fuſſily year 1214; ſubject to the following modifications."

Section III. What intereſt to be adjudged if the cauſe of action have ariſen before the period ſtated in the preceding ſection.

§ III. "INSTEAD of the limitations of intereſt ſpecified in Sections II, and III, Regulation XV, 1793, if the cauſe of action ſhall have ariſen before the period ſtated in the preceding ſection, the courts of civil judicature are to decree whatever rate of intereſt may have been voluntarily ſtipulated; or, if intereſt be payable in any caſe wherein a ſpecific rate may not have been ſtipulated, according to the law and uſage of the province; in conformity with the ſpirit of Section IX, Regulation VII, 1795; which directs, with reſpect to bills of exchange, receipts, or notes of hand, that the cuſtom of the country is to be abided by; and with reſpect to dealings and money tranſactions amongſt mahajins and ſhroffs, that the eſtabliſhed cuſtoms obſerved, and enforced, amongſt them, are to be adhered to by the courts in their inquiries and deciſions."

Section IV. Rate of intereſt to be adjudged after the period ſpecified in Section II.

§ IV. "IF the cauſe of action ſhall ariſe after the period ſpecified in Section II, of this regulation, the courts are not to decree any intereſt above the rate of one per cent per menſem; or twelve per cent per annum."

Section V. Penalties in

§ V. "THE forfeiture of intereſt, for ſtipulation of a high-

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er rate than what is authorized, enacted by Section VIII, Regulation XV, 1793, and the forfeiture of principal and intereſt, in caſes of attempts to elude the preſcribed rules, by deductions from the principal, or other devices, provided againſt by Section IX, Regulation XV, 1793, ſhall not be conſidered applicable to any loans actually and bonâ fide contracted, or to any bonds or other inſtruments voluntarily given for the evidence and ſecurity of ſuch loans, previouſly to the period ſtated in Section II of this regulation."

Sections VIII, and IX, Regulation XV, 1793, not applicable to loans contracted, or engagements given, before the period ſtated in Section II.

§ VII. "THE rule contained in Section X, Regulation XV, 1793, for the redemption of mortgaged property whenever the principal ſum lent, and the ſimple intereſt due thereupon, ſhall have been realized from the uſufruct, is to be conſidered in force, throughout the province of Benares, from the commencement of the Fuſſily year 1214; but ſhall not be applied retroſpectively, in oppoſition to any ſubſiſting engagement, voluntarily contracted before the period fixed for the operation of this regulation."

Section VI. From what period the rule for redemption of mortgaged property, in Section X, Regulation XV, 1793, to have effect in Benares.

§ VII. "IN addition to the proviſions made in the provinces of Bengal, Behar, Oriſſa, and Benares, by Regulation I, 1798, and in the ceded and conquered provinces by Regulation XXXIV, 1803, for the redemption of mortgages and conditional ſales of land, under deeds of bye-bil-wuffa, Kut-cubaleh, or any ſimilar deſignation, it is hereby provided, that when the mortgagee may have obtained poſſeſſion of the land, on execution of the mortgage deed, or at any time before a final foreclоſure of the mortgage, the payment, or eſtabliſhed tender, of the ſum lent under any ſuch deed of mortgage and conditional ſale, or of the balance due, if any part of the principal amount ſhall have been diſcharged, or when the mortgage may not have been put in poſſeſſion of the mortgaged property, the payment, or eſtabliſhed tender, of the principal ſum lent, with any intereſt due thereupon, ſhall entitle the mortgager

Section VII. Further proviſion for the redemption of mortgages and conditional ſales of land, under deeds of bye-bil-wuffa, kut-cubaleh, or any ſimilar deſignation, at any time within one year after the mortgagee's application to the zillah or city court, for foreclоſing the mortgage, and rendering the ſale concluſive.

gager and owner of ſuch property, or his legal repreſentative, to the redemption of his property, before the mortgage is finally foreclosed, in the manner provided for in the following ſection; that is to ſay, at any time within one year (Bengal, Fuſſily, or Willaity, according to the era current, where the mortgage may take place,) from and after the application of the mortgagee to the zillah, or city court of dewanny adawlut, for cloſing the mortgage, and rendering the ſale concluſive, in conformity with Section VIII, of this regulation; provided that ſuch payment, or tender, be clearly proved to have been made to the lender and mortgagee, or his legal repreſentative; or that the amount due be depoſited, within the time above ſpecified, in the dewanny adawlut of the zillah, or city in which the mortgaged property may be ſituated; as allowed, for the ſecurity of the borrower and mortgager, in ſuch caſes, by Section II, Regulation I, 1798, and Section XII, Regulation XXXIV. 1803; the whole of the proviſions contained in which ſections, as applied therein to the ſtipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this regulation."

Section VIII. Mortgagee, or holder of a deed of mortgage and conditional ſale, ſuch as is deſcribed, how to proceed, when deſirous of foreclosing the mortgage, and rendering the ſale concluſive.

§ VIII. WHENEVER the receiver or holder of a deed of mortgage and conditional ſale, ſuch as is deſcribed in the preamble and preceding ſections of this regulation, may be deſirous of foreclosing the mortgage and rendering the ſale concluſive, on the expiration of the ſtipulated period, or at any time ſubſequent before the ſum lent is repaid, he ſhall (after demanding payment from the borrower, or his repreſentative,) apply, for that purpoſe, by a written petition to be preſented by himſelf, or by one of the authorized vakeels of the court, to the judge of the zillah or city in which the mortgaged land, or other property, may be ſituated.

Judge of the zillah, or city court, how to proceed on re-

The judge, on receiving ſuch written application, ſhall cauſe the mortgager, or his legal repreſentative, to be furniſhed,

as

as poſſible, with a copy of it, and ſhall at the ſame time, notify to him, by a perwanah under his ſeal and official ſignature, that if he ſhall not redeem the property mortgaged, in the manner provided for by the foregoing ſection, within one year from the date of the notification, the mortgage will be finally foreclоſed, and the conditional ſale will become concluſive." *

receiving applications for the purpoſe ſtated.

REGULATION XXXIV, 1803, "for determining the rate of intereſt on money, in the provinces ceded by the Nuwaub Vizier" is extended by Section XXIII, Regulation VIII, 1805, to the provinces ceded by Dowlut Rao Sendheea, and by the Peſhwa, with the following modification. "The 30th of December, 1803, ſhall be the date to be adopted in the zillahs of Allyghur, Agra, and the northern and ſouthern diviſion of the zillah of Saharunpore; and the 16th of December, 1803, ſhall be the date to be adopted in the zillah of Bundlecund; in lieu of the date ſpecified in Sections II, III, and IX, Regulation XXXIV, 1803. The 1ſt of January, 1806, ſhall be adopted in the whole of the above zillahs, in lieu of the date ſpecified in Sections VII and VIII, of the ſaid Regulation."

C. P. R. VIII, 1805, § XXIII. Extenſion of Regulation XXXIV, 1803, for determining the rate of intereſt on money, to the provinces ceded by Dowlut Rao Scindeah, and by the Peiſhwa, with alteration of dates.

THE rule of evidence reſpecting bonds, contained in Section XV, Regulation III, 1793, and extended to the province of Benares, with reſpect to bonds executed after the 1ſt July 1795, by Section IX, Regulation VII, 1795, (as noticed in page 188) was alſo re-enacted for the ceded and conquered provinces, by the third clauſe of Section VI, Regulation VIII, 1805, in the following terms. "The zillah courts are pro-

Rule of evidence reſpecting bonds, in Section XV, Regulation III, 1793, re-enacted for the ceded and conquered provinces, by Third Clauſe of Section VI, Regulation VIII, 1805.

* On the 27th of December 1807, the court of Sudder Dewanny Adawlut, in anſwer to a reference from the judge of zillah Midnapore, through the Calcutta provincial court, declared the conſtruction of the above ſection to be, that it is applicable to all conditional ſales, which may not have become concluſive, by the expiration of the ſtipulated period, before the time fixed in the preamble for this regulation to be in force; but not to any conditional ſale, which had become concluſive before this regulation was in force.

inhibited from decreeing the payment or ſatisfaction of any ſum due on a tummaſook, or bond, which may be entered into after the promulgation of this regulation, unleſs the bond ſhall be proved to have been executed in the preſence of two credible witneſſes; or the payment of the ſum demanded on the bond, or ſome other valuable conſideration for it having been received, ſhall be proved to the ſatisfaction of the court. But the reſtriction contained in this clauſe ſhall not extend to any bills of exchange, receipts, or notes of hand; in the determination on which the cuſtom of the country ſhall be abided by."

Rule ſubſtituted for Regulation XV, 1793 by Section IX, Regulation XIV, 1805, in Cuttack, and three purgunnahs acquired in October 1803.

THE following rule has been ſubſtituted for Regulation XV, 1793, by Section IX, Regulation XIV, 1805, in Cuttack, and the three purgunnahs acquired with that diſtrict in October 1803.

"*Firſt.* THE following rules ſhall be obſerved in the zillah of Cuttack, including the pergunnahs of Putteſpore, Kummardichour, and Bogiae, reſpecting the payment of intereſt on money."

Intereſt to be adjudged if the cauſe of action have ariſen before the 14th October 1803.

"*Second.* IF the cauſe of action ſhall have ariſen before the 14th of October 1803, the courts of civil judicature are not to decree a higher or lower rate of intereſt than the following; unleſs a lower rate of intereſt ſhall have been ſtipulated to be paid by the parties in the ſuit:—

"On ſums not exceeding one hundred ſicca rupees, two rupees and eight annas per menſem, or thirty per cent per annum.

"On ſums exceeding one hundred ſicca rupees, two per cent per menſem."

Or, if the cauſe of action have ariſen on, or ſubſequent to

"*Third.* IF the cauſe of action ſhall have ariſen on, or ſubſequently to, the 14th of October 1803, the courts are

not to decree intereſt on any ſum whatever above the rate of twelve per cent per annum."

the 14th October 1803.

"*Fourth.* The courts are not to decree any intereſt whatever, in any caſe, where the bond, or inſtrument given for the ſecurity and evidence of the debt, ſhall have been granted on, or ſubſequently to, the 14th day of October 1803, and ſhall ſpecify a higher rate of intereſt than is authorized in clauſe third of this ſection."

In what caſe no judgment for intereſt to be given.

"*Fifth.* Nor to decree any intereſt whatever in favor of the plaintiff in any caſe, where the cauſe of action ſhall have ariſen on, or ſubſequently to, the 14th of October 1803, where a greater intereſt, than that which is authorized by this regulation, ſhall have been received or ſtipulated to be received, if it be proved that any attempt has been made to elude the rules preſcribed in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment but for the diſmiſſion of the ſuit, with coſts to be paid by the plaintiff."

In what caſe no judgment to be given but for diſmiſſion of the ſuit with coſts.

"*Sixth.* In caſes of mortgages of real property, executed prior to the 14th of October 1803, in which the mortgagee may have had the uſufruct of the mortgaged property (whether he ſhall have held it in his own poſſeſſion or not,) the uſufruct is to be allowed to the mortgagee, in lieu of intereſt, agreeably to the former cuſtom of the country, (provided it ſhall have been ſo ſtipulated between the parties) until the abovementioned date; ſubſequently to which, the ſame intereſt is to be allowed on ſuch mortgage bonds, and alſo on all bonds for the mortgage of real property, which have been entered into, on, or ſince that date, or that may be hereafter executed, as is allowed on all bonds, which have been, or may be granted on, or poſterior to, ſuch date, and no more; and all ſuch mortgages are to be conſidered as virtually

Rule to be obſerved with reſpect to mortgages of real property executed prior to, or ſince the 14th October 1803.

virtually and in effect cancelled and redeemed, whenever the principal ſum, with the ſimple intereſt due upon it, ſhall have been realized from the uſufruct of the mortgaged property, ſubſequent to the 14th day of October 1803, or otherwiſe liquidated by the mortgager."

Remark upon the laſt clauſe of the above rule; as not applicable to conditional ſales of land, under deeds of Bye-bil-wuffa; or other deeds of the above nature.

THE laſt clauſe of the above rule correſponds exactly, (except in the date fixed for its operation) with Section X, Regulation XV, 1793; and in the Third Section of Regulation I, 1798, "to prevent fraud and injuſtice in conditional ſales of land, under deeds of bye-bil-wuffa, or other deeds of the ſame nature;" it is declared, that ſuch part of Section X, Regulation XV, 1793, "as directs, that the mortgages, therein referred to, are to be conſidered as cancelled and redeemed, whenever the principal ſum, with the ſimple intereſt due upon it, ſhall have been realized from the uſufruct of the mortgaged property, or otherwiſe liquidated by the mortgagee, being inapplicable to the conditional ſales referred to in this regulation, it is hereby declared not to apply thereto." Of courſe, this explanation applies equally to the Sixth Clauſe of Section IX, Regulation XIV, 1805; and under Section XI, of that regulation, whereby all regulations in force, upon matters of civil cognizance, in the provinces of Bengal, Behar, and Oriſſa, which are not inconſiſtent with the ſpecial proviſions for Cuttack and its dependencies, are extended thereto, the proviſions relative to conditional ſales of land, in Regulation I, 1798, with thoſe in Sections VII, and VIII, of Regulation XVII, 1806, muſt be conſidered in force throughout the zillah of Cuttack; as well as in pergunnahs Putteſpore, Kummardichour, and Bograe, annexed to zillah Midnapore. *

Proviſions in Regulation I, 1798, and Sections VII, VIII, of Regulation XVII, 1806, relative to ſuch mortgages and conditional ſales, in force for Cuttack, and three purgunnahs annexed to zillah Midnapore, as in Bengal and other Provinces.

To

* The ſupplement thus concluded brings down the Firſt Part of this Analyſis to the end of 1808; and the Second Part, which has been printed, includes the regulations for criminal juſtice, and the police, to the ſame period. The Volume containing the Firſt and Second Parts, with this Supplement, as far as it has been accurately compiled, compriſes therefore the whole of the legal proviſions in force, which

Reſolutions of government paſſed on the 3d February 1809, with a view to the improvement of the adminiſtration of juſtice.

To this concluſion of the judicial parts of an Elementary Analyſis, undertaken (as ſtated in the Introduction) to facilitate the ſtudy and knowledge of the laws and regulations enacted by the Governor General in Council of the Britiſh poſſeſſions in India, and chiefly deſigned for the uſe of the ſtudents in the College of Fort William, may, with propriety, be ſubjoined the following reſolutions of the Governor General in Council paſſed on the 3d February 1809, with a view to the improvement of the adminiſtration of juſtice in the territories immediately dependent upon the Preſidency of Fort William.

"*Firſt.* THAT a profeſſor of law be appointed for the inſtruction of the junior branch of the Company's ſervants in the principles of juriſprudence."

"*Second.* THAT the profeſſor of the regulations be requeſted to commence a courſe of lectures on the regulations."†

"*Third.* THAT the ſervants of the Company, who on

---

which have immediate reference to the Judicial Department. With a view to render it more uſeful for reference, an Index is added to this Volume, inſtead of waiting for the concluding part to give a General Index, as propoſed in the Note to page 213. Thoſe however who make themſelves familiar with the *Summary of Contents*, which ſtates the principal ſubjects, in the order wherein they are reſpectively treated, will find little occaſion for the Index; and, at all events, a preference of the Summary is recommended to thoſe who may wiſh to ſtudy the Regulations for general, ſyſtematical, information of their proviſions; which was the object intended to be promoted by this Work.

† Indiſpenſable and increaſing official duties making it impoſſible that I could undertake a courſe of lectures on the regulations, as propoſed, I felt it incumbent on me to requeſt the permiſſion of Government to reſign the office of Profeſſor of the Regulations; that ſome other perſon, who could devote a ſufficient portion of his time to render it efficient for the purpoſe intended, might be appointed to it. This has been done accordingly; and the moſt able inſtruction of the junior ſervants of the Company, in the principles and proviſions of the regulations, may be expected from the knowledge and experience of Mr. CRISP. But the Governor General in Council having been pleaſed to expreſs his ſatisfaction with my Analyſis, as far as it has been executed; and his acceptance of an offer from me to proſecute it to a concluſion; I ſhall readily continue it during occaſional vacations of court.

J. H. HARINGTON.

quitting the College may make choice of, or be ſelected by government for the judicial department, be attached to the Sudder Dewanny Adawlut and Nizamut Adawlut, until their ſervices are actually required in the interior of the country."

"*Fourth.* THAT the offices of firſt and ſecond aſſiſtant to the regiſter of thoſe courts, as at preſent conſtituted, be aboliſhed."

"*Fifth.* THAT the aſſiſtants attached to the Sudder Dewanny Adawlut and Nizamut Adawlut be examined half yearly by the judges of the Sudder Dewanny Adawlut, jointly with the profeſſor of the regulations, as to their knowledge of the regulations; and of the practical duties of regiſters, judges, and magiſtrates; and that the reſult be regularly reported to the Governor General in Council."

"*Sixth.* THAT thoſe aſſiſtants be in like manner examined half yearly by the advocate general, jointly with the profeſſor of law, as to their knowledge of the general principles of juriſprudence; and of the duties and powers of a juſtice of the peace; and that the reſult be reported to government."

"*Seventh.* THAT the Sudder Dewanny Adawlut and Nizamut Adawlut be requeſted to cauſe the reports, of the cauſes and trials adjudged by them, to be prepared with punctuality, by the aſſiſtants attached to thoſe courts; to make a ſelection from the reports already prepared, for publication, without loſs of time; and to cauſe a ſimilar publication to be made periodically in future."

"*Eighth.* THAT the ſervants of the Company, who on quitting the College may enter on their courſe of ſervice in the judicial department, riſe only in that department; and that,

in

in like manner, thoſe perſons who may enter into the revenue department, riſe only in that branch of the ſervice."

Concluding remark on the advantages to be expected from the operation of the preceding reſolutions.

UNDER the operation of the above reſolutions it may be confidently expected, that the ſervants of the Company, to be employed in the Judicial Department, will carry with them, on their firſt appointment to the interior courts of judicature, in addition to competent proficiency in the languages of the country, obtained from their collegiate ſtudies, a well grounded knowledge of the general principles of juriſprudence, and of the duties and powers of a juſtice of the peace; a perfect converſance with the laws and regulations enacted by the Governor General in Council for the civil government of the ſeveral provinces under this Preſidency; and a practical acquaintance with the duties of regiſters, judges, and magiſtrates, which they are themſelves deſtined to perform on their entrance upon the public ſervice. On the policy and expediency of an arrangement calculated to promote theſe objects, it cannot be neceſſary to enlarge. The importance of ſuch qualifications to a due adminiſtration of the laws, by which more than forty millions of people are governed, and by which their rights are ſecured, is manifeſt; and the conſequent public utility of any meaſures conducive to the attainment of them is indiſputable.*

* In page 178 of this Analyſis was exhibited a ſtatement of the number of ſuits decided upon trial, diſmiſſed for default, or adjuſted by the parties, in the ſeveral civil courts of Bengal, Bahar, Oriſſa, and Benares, during the year 1804; and of the number of ſuits depending on the 1ſt January 1805. The following is a ſtatement of the number of ſuits decided, diſmiſſed, or adjuſted, in the above provinces, and in the conquered and ceded provinces, during the three laſt years, 1806, 1807, and 1808.

COURT OF SUDDER DEWANNY ADAWLUT,

In 1806,	—	64
1807,	—	60
1808,	—	55.

PROVINCIAL COURTS OF APPEAL.

In 1806,	—	814
1807,	—	764
1808,	—	823.

ZILLAH AND CITY JUDGES.

In 1806,	—	11,173
1807,	—	10,038
1808,	—	9,489.

REGISTERS OF ZILLAH AND CITY COURTS.

In 1806,	—	8,171
1807,	—	7,457
1808,	—	7,870.

HEAD NATIVE COMMISSIONERS.

In 1806,	—	8,189
1807,	—	16,036
1808,	—	14,861.

OTHER NATIVE COMMISSIONERS.

In 1806,	—	2,25 802
1807,	—	1,98,270
1808,	—	1,94,931.

TOTAL OF SUITS DECIDED, DISMISSED, OR ADJUSTED.

In 1806,	—	2,54,213
1807,	—	2,32,625
1808,	—	2,28,029.

The number of original cauſes and appeals depending on the 1ſt January, 1809, was as follows:

In Sudder Dewanny Adawlut, - - -	104
In Provincial Courts, - - -	1,934
Before Zillah and City Judges, - -	21,234
Before Regiſters of Zillah and City Courts,	8,762
Before Head Native Commiſſioners, -	8,101
Before other Native Commiſſioners, -	91,958
Total of depending Suits	1,32,093

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NOTE.

NOTE.

In binding up the Volume, to which this Index refers, the following order should be observed. 1. The accompanying Title Page for Vol. I. 2. The summaries of contents of the First and Second Parts, and of the Supplement to the First Part. 3. Address to MARQUESS WELLESLEY, prefixed to the First Part. 4. Introduction to the Work. 5. First and Second Parts, and Supplement to the First Part, Pages 1 to 656. 6. The Index.

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